Security prefix slip (if necessary) to be affixed here.

[redacted] PACIFIC DEPT. : 1

FILE BEGINS 19/1/52. ENDS Ends - 15/9/53. PART

PART

FILE TITLE

Muslim Personal Law in Fiji.

FILE NUMBER

[redacted]
PAC
173/1/01.

W 156

CLOSED UNTIL 1984

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INDEX HEADINGS

Muslim. | Native Law. | Fiji

H452 454

CO1023/150

PRECEDENTS NOTED UNDER :—

RELATED FILES :—

85125/51. Muslim Marriage Legislation.

85557/8/48.

Indian in Fiji admin of Estates of Indians who die Intestate in Fiji

HK. P. 326/1/01.

Residential Tax Fiji

HKP. 45/1/01. Muslim Personal Law. Fiji (54/56)

CROSS REFERENCED UNDER :—

now Matheson WAC.

now Fiji - not Div.

HRP 173/1/01.

1 W. A. C. Matheison – (UK Delegation to U.N. Paris). 19-1-52

Encloses copies of exchange of correspondence with Zia-ud-Din Pakistan Delegation to U.N. General Assembly, Paris, on the subject of Muslim Personal Law in Fiji

Mr Hickman

(1) has, as an enclosure, an exchange of correspondence between Mr Matheison & M. Zia-ud-Din on the subject of personal law in Fiji, from which it appears that further discussions are to take place in London. The Pakistanis raise no new points, and the letters take us little further.

Dr. Mere might like to comment.

D.C.R. 29/1.

After discussion with Dr Mere, I have telephoned to Mr Hampshire (CRO) & asked him to comment first on the aspect of Anglo-Pakistan relations which is raised by the penultimate para of the Pakistan letter of the 7th January, enclosed with (1). We must also send a copy of 1 & enclosure to the Home Office who will be interested in the status of U.K. citizens in Pakistan. Mr Hampshire is going to try to find out who would be concerned in the C.R.O. We shall, I think, have to send the Pakistan letter to Fiji for comment & we may as well send it with copies of the earlier correspondence at once & say that we are considering the matter & will comment as soon as possible. Mr Sidebotham should see. I suggest that we discuss this with Sir R. Garvey when he arrives.

C.J. Hickman

29/1

Mr Sidebotham has asked for information on one or two points.

(1) Mr Kirkman. Could you not say whether the Convention on Human Rights has any bearing on the Fiji Muslim question

(2) Legal Library. Please supply a note of those territories whose legislation gives specific provision that Muslims may be governed by Muslim personal law regarding (i) Muslim [form of] marriage
(ii) Law of Inheritance
(iii) Guardianship
(iv). Polygamy
(v) Divorce

C.A. Kirkman
29/1/52.

1. With reference to Mr. Kirkman's enquiry in (1) above, we may consider the bearing of international agreements on human rights from the point of view of whether:

(a) Muslim law e.g. of marriage and divorce, itself offends the principle of human rights;

(b) a denial of permission for Muslim law to operate in Fiji offends those principles.

2. The Council of Europe Convention for the Protection of Human Rights has been ratified by H.M.G., and Fiji have expressed their willingness to have it extended to them (5/25526/1/A/51). Relevant articles are:

Cmd. 8130

Article 12. "Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

Article 14 dealing with non discrimination on the lines of the U.N. Covenant Article 1.1. is also relevant.

PGS. 11/2

Article 9. "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

3. The Charter of the United Nations, to which the U.K. is a signatory does no more in this connection than say (Article 55) that "the U.N. shall promote .... universal respect for, and observance of, human rights and fundamental freedom for all without distinction as to race, sex, language or religion".

4. The Universal Declaration of Human Rights, which is not a legal document but a statement of aims, says:

Article 16. "1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

Article 18. "Everyone has the right to freedom and thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others, and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

5. The United Nations draft Covenant of Human Rights, which is to be a legally enforceable document, is not yet in being, and in any case it is not certain that H.M.G. will become a party to it. As it stands, the draft Covenant provides:

Article 1. 1. "Each State Party hereto undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in this Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Article 13. "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are pursuant to law and are reasonable and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."

/6.

6. It has always seemed to me that there was some conflict in these international agreements between clauses which safeguarded non-discrimination, for example on grounds of sex, and articles which guaranteed freedom for religious observances* that involved such discrimination. But this is perhaps beside the point here.

+ As in Muslim divorce

7. If Muslim law must be accounted as part of religious observance, then it might be argued that Fiji would be offending against, say, the European Convention on Human Rights in denying the operation of Muslim law, except that freedom to manifest one's religion or beliefs is by the Convention subject to such limitations as are prescribed by law. I think, however, that the Pakistanis might regard the point as arguable and it would be valuable to have the legal opinion of Mr. Gordon-Smith, (or Sir Leslie Gibson, if he has now taken over this subject). I therefore pass this to Mr. Gordon-Smith.

Gaitho Okevecs

6th February, 1952.

Before action is taken on (1) I should like Mr. Morris to have an opportunity of seeing the papers

E Ols
6/2

Sir Leslie Gibson

We spoke and you agreed to deal with this.

I have glanced at these papers and it seems to me that the initial question is whether it is a tenet of the Muslim religion that polygamy and divorce at will should be allowed (as opposed to being a practice that Muslim Society has adopted without being required to do so by their religion). If it is, then it seems to me that they should be allowed to Muslims in Fiji (Article 9 (1) of the Convention), unless paragraph 2 of Article 9 can be invoked, which I am inclined to doubt.

As regards para. 6 of Miss Mercer's minute, it is the right to freedom of religion (inter alia) which must be granted without discrimination. The fact that a religion may involve discriminatory practices does not

seem to raise any difficulty unless those practices conflict with one of the other rights mentioned in the Covenant. Thus I do not think the Muslim practices in question here, which discriminate in favour of the husband, conflict with Article 12 read with Article 14.

B. Gordon-Smith.

11/2

Muslims regard their law on the questions which have been raised as being divinely inspired. I think however that it is quite impossible to construe Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as meaning that the ordinary civil rights and liabilities of any person are to be regulated as a matter of law by any code which he happens to believe to be divinely inspired. Paragraph (1) of Article 9 (which repeats almost verbatim Article 18 of the Universal Declaration of Human Rights) clearly uses the words "manifest his religion or belief in ..... practice and observance" as referring to the carrying out of religious ceremonies in the narrow sense and not as applying to the performance of acts designed to give rise to consequences which have legal validity. If the words are read in this sense (and I have checked with the United Nations section of the C.R.O., that this is the sense in which they are intended to be read) I do not think it is material whether the religious ceremony is compulsory or optional according to the religion or belief.

2. I see that the Convention has a Colonial application clause - Article 63. I do not know whether it has been extended to Fiji but I imagine it has not been extended. Pakistan is not of course a party to the Convention.

3. I agree with Mr. Gordon-Smith as regards his comment on paragraph 6 of Dr. Mercer's minute.

4. I should have thought that there was probably a case for applying the Muslim Law in Fiji on a rather wider basis than it is applied at present, but before this possibility is further considered, it may be well to see the note which is to be prepared by the Legal Library.

Gibson

(Sir Leslie Gibson)
13th February, 1952.

Mr. Kirkman

In the attached memorandum I have attempted to cover the position with regard to

to legislation affecting Mohammedan personal law in colonial territories. Some territories, of course, have negligible Mohammedan populations, and it may be assumed that those colonies, etc, not included in the memorandum have no relevant legislation.

(A spare copy of the memorandum is available, if required)

Fitzmaurice
4.3.52

I am very grateful for Mr Fitzmaurice's detailed memorandum opposite. It would, I think, help in the consideration of the memorandum if States Depts could use as far as possible the number of Muslims in each territory dealt with in the memorandum & the proportion which this figure represents of the whole population.

J A Thurlow
5/3

Mr. Kirkman

So far as they are available, the numbers of Muslims are given in the table below.

[In the table, — means 'nil or negligible'; ... means 'not available'; figures in brackets are approximate]

Territory	No. of Muslims	% to total pop.	Territory	No. of Muslims	% to total pop.
Aden Colony	70,000	87	Mauritius	(60,000)	(15)
Brit. Guiana	29,000	8	Nigeria	...	...
Brunei	27,000	67	North Borneo	...	...
Cyprus	80,000	18	Nyasaland	—	—
Fiji	17,000	6	Sarawak	134,000	25
Gambia Col. & Prot.	(200,000)	(80)	Sierra Leone	...	...
Gold Coast	(500,000)	(10)	Somaliland	(500,000)*	(100)*
Jamaica	—	—	Trinidad	33,000	6
Kenya, Uganda & Tanganyika	104,000	—	Zanzibar	...	...
Malaya (incl. Singapore)	(2,500,000)	(45)			

* from statement in C.O. List

Almost all the figures are from censuses taken within the past 7 years; it has not been possible to give figures separately for either Kenya, Uganda and Tanganyika, or for Fed: of Malaya & Singapore.

9

R. A. Cooper
7/3

The cases most similar to that of Fiji where the muslim minority is (a) small
(b) an unobtrusive element since the establishment of British jurisdiction
(c) does not include indigenous converts of any kind of Malaya

are British Guiana + Trinidad.
The treatment of Muslims in British Guiana seems to be very much the same as in Fiji. Trinidad makes some concessions to Muslims.

Sir Leslie Gibson may wish to comment further re para 4 of his minute of 13.2.52.

C. H. Kirkman
8/3

Mr. Kirkman,

I have done a note and hope it will assist you.

2. Copies of the relevant colonial legislation (which have been supplied by the Library) are enclosed.

3. The Library's note on colonial legislation dealing with the matters in question has not been checked by me. It is however extremely useful as giving the general picture of the way in which other colonies deal with these problems.

L. Gibson

(Sir Leslie Gibson)
20th March, 1952.

Sir Leslie Gibson's note is most helpful. I think that we should do well to send (part of) it to Fiji, when writing on this subject, together with Legal Library's memorandum on the position in other Colonies. First, however, we must get the C.R.O. views & Mr Smith tells me that a dft of the Fiji Constitution has been submitted to Mr Pritchard (on Mr Hampshire's absence on leave) so we may expect to hear in

a day or two. Mr Sedgwick may wish to see the file now & comment in case there is not time next week before he goes on leave. Ben?
B.L. I will ring you when the CRO.

24/3

10

2. M. Portsland - (CRO) F 4185/15 22. March. 52
Ref. 1. Gives C.R.O. views from the standpoint of relations between the U.K. & Pakistan.

3 Memorandum showing the extent to which Colonial Legislation makes special provision in Relation to Marriage etc in accordance with Mohammedan law

4 note by Sir L. Gibson

5 C.R.O. w/c of (4) 31.3.52

Dr Mercer,
Sir K. Roberts Wray
Mr. Paskin.

Commenting on the representation made by the Pakistan Delegation to the United Nations General Assembly in Paris in the letter of 17th January, 1952 to Mr. Mathieson, enclosed with (1), the C.R.O; in their letter at (2), have said that it would be difficult to send a convincing reply to Pakistan without prior consultation with the Governor of Fiji. They suggest that there may have been some shift of opinion among the various communities in Fiji since the Governor last reported on the subject rather more than three years ago. In the interests of Anglo-Pakistan relations, they would naturally like to make some concession to the Muslims in Fiji.

To put this matter in its correct perspective, it should be stated that the most vigorous opposition to the demands by the spokesmen who claimed to speak for the Muslim community in Fiji has come not from the Government of Fiji but from the Secretary of State. In an attempt to end a discussion which had been going on for a decade, the Secretary of State sent a strongly worded despatch, at (8) on 85125/48, enclosing a memorandum on the subject which was drafted initially by Mr. de Comarmond. This despatch, which was submitted to Ministers, was based on general principles laid down by Mr. Creech Jones in his minute of 16/4/47 on 85125/47. If, therefore, we now ask the Governor of Fiji to reconsider this matter, this would represent a change in policy by H.M.G. and it may be thought necessary to refer the matter to Ministers before any such change is made.

46

In his note at (4) on this file, Sir Leslie Gibson takes a different view on certain points from that taken by Mr. de Comarmond in his memorandum at (6) on 85125/48. In paragraph 7, however, Sir Leslie Gibson agrees that polygamy should not be permitted in Fiji.

As regards inheritance, in para. 8 of his note, Sir Leslie Gibson suggests that the right course might be to apply the Muslim law in cases of intestacy but not to go any further. This is open to certain objections which are mentioned in Mr. de Comarmond's memorandum and, although it may be true that the general trend of Colonial legislation is to apply Muslim law in cases of intestacy, it appears from the memorandum at (3) that in most colonies where there are small Muslim minorities, this concession is not made. It can of course be argued that if the Muslim leaders are able to persuade their people of the desirability of their property being divided according to Mohammedan law on their death, there is nothing to stop the individual making such provisions in his or her will. Sir Leslie Gibson does not share Mr. de Comarmond's strong views about Muslim divorce and would see no strong objection to its application in Fiji. In paragraph 9 of his note Sir Leslie Gibson recommends that the Muslim law regarding guardianship should not be applied.

It appears therefore that the only issues on which any concession could be considered are divorce and inheritance. In paragraph 4(c) of his despatch at (8) on 85125/48, the Secretary of State said that he would not object to the application of Muslim law in cases of intestacy, but, as far as I can see, the Government of Fiji has taken no steps in this matter. This gives us a little ground for manoeuvre. It is doubtful whether any change of policy as regards divorce could be contemplated at the present time.

I propose therefore that a despatch to the Acting Governor should be drafted informing him of the exchanges which have taken place with the Pakistan Government on this matter and asking him whether there has been any change in the views of the various communities in Fiji since the Governor last reported on the subject and whether he anticipates any political difficulty in Fiji in maintaining the policy which was decided in 1949. We should also ask him about the proportion of Ahmeddiyas and orthodox Muslims in Fiji as requested in paragraph 2(g) of (2). We have an estimate of the proportion in 1946, see para. 6 of 19 on 85125/44-46, but it may be that this needs revision. Referring to paragraph 4(c) of the despatch at (8) on 85125/48, we should ask the Acting Governor whether there has been any strong demand for the adoption of Muslim law in cases in intestacy and whether he has considered granting this concession separately.

While it is not possible to send to Fiji Sir Leslie Gibson's note at (4) as it stands, in view of the firm expression of policy at (8) on 85125/48, I suggest that we should put to the Acting Governor various criteria prescribed in paragraph 2 of that note. The Acting Governor's replies would assist us in consideration of whether any change in policy should be recommended to the Secretary of State and would also furnish us with ammunition for the reply to Pakistan. Provided that a non-committal tone is adopted, I suggest that it may not be necessary to refer such a despatch to Ministers.

J P Hilkman
4/4

I agree with Mr Kilkman's proposed action i.e a despatch in non-committal terms bring on the peg of the next Pakistani approaches. One point of importance seems to me to be to establish that there is not only a strong demand for the changes asked for but a general demand in the Muslim community. Let even that

would be only one factor in the consideration. I may say also with respect the grounds on which we have refused to meet these demands in the past are convincing and to my mind meet (c) in the CRO letter at (2). I agree with the CRO view that the Pakistani warning of reprisals should not be taken seriously but I do not think that they distinguish sufficiently between freedom to worship in accordance with the tenets of a particular religion and the much wider question of whether all that is normally accepted by adherents of a religion as proper is to be permitted. After all, the "British Raj" did I believe stamp on the Hindu practice of suttee which may have had as much religious authority as polygamy has in this case.

There is also the view, in regard to para (1) of the CRO letter, that the British Raj in protecting Christians in India was not only protecting its own religion i.e. the religion of the sovereign, but was protecting a religion which was in the direction of an improvement on the indigenous religion in social matters. (It is an unfortunate thing, in many more cases than this, that fingers can be pointed at the social conduct of nominal Christians). And it is a far different matter to continue to allow heathen practices in places which have not advanced from them (e.g. in Africa) from allowing a reversion to customs which to our minds are retrograde. One pillar of our previous case has been that persons who move into our sphere of life must have regard to our social susceptibilities and that pillar has not to my mind yet been attacked, nor can it, I think, be used against us in Pakistan.

In short, while I agree that we should write to Fiji, I do not think the CRO have established anything towards a change in our policy.

(Dr Meares is away)

E.J. Emrys
5.4.52

X see encl to 1.

If you are going to draft, perhaps the file could go to my room later.

While I share Mr Burr's attitude at X in his minute above, I do not think we use it as a major part of our defence of the Fiji Govt's policy because it is based on the Christian point of view rather than on ~~generally accepted~~ any universally applicable legal or political arguments.

C A Kirkman
7/5.

I agree that we should consult the Government of Fiji on the lines proposed, leaving it open to them to recommend a change of policy if they wish to do so but without giving any lead in that direction. I doubt whether we should include the enquiry suggested at 'X' in Mr. Kirkman's minute of the 4th April. If there were any political difficulty in maintaining the present policy, Fiji should have said so, and any such difficulty is likely to arise in connection with our own relations with Pakistan rather than in Fiji.

2. I agree with Mr. Kirkman that we cannot rely on the point at 'X' in Mr. Burr's minute of the 5th April. There can be little doubt that Muslims would emphatically deny that our ideas of social legislation are an improvement on the Muslim ~~Code~~ law.

3. It is a fair assumption that Mr. Hassan, who has been the prime mover of the agitation in Fiji, is behind these representations from Pakistan. It is significant that no reference is made to other comparable Colonies such as Mauritius and Trinidad, neither of which permits polygamy (though Trinidad allows Muslim divorce). Sir Leslie Gibson refers to Singapore, Kenya and Sierra Leone, but the circumstances are, I think, somewhat different. In Kenya and West Africa there have been Muslim communities for centuries. Whether that is the case in Singapore I do not know, but the explanation of the present law probably is that the Straits Settlements were administered by the East India Company until the middle of the last century.

4. At present I see no very strong reason for altering the policy hitherto laid down, particularly having regard to the attitude adopted by the Government of the United Provinces, the Government of India and the Allahabad High Court.

5. In the matter of succession, I agree that, as I have previously said, we might concede Muslim law on intestacy, but it would in my view be quite wrong to take from Muslims their present freedom of testamentary disposition. If a devout Muslim wishes to observe the rules of his religion in this matter, there is nothing to prevent his doing so.

6. As regards polygamy and divorce, public policy is, of course, also involved, but here again the wishes of the people concerned are of great importance and the crucial question is whether the Government of Fiji should accede to the demand by some Muslims that they should be permitted to contract polygamous marriages and to exercise rights of divorce according to Muslim religion, if persons who might suffer from the exercise of those rights (particularly women already married) object. In my opinion the answer must be 'No'. This, of course, does not of itself exclude the possibility of agreeing

/to

law
to introduction of the Muslim/of marriage and divorce as respects marriages taking place in the future.

13/5/52

Mr Kirkman

D/f & h/w.

G. J. Jamieson
21/5/52

I note that the minutes above were not seen by Mr Parkin to whom I submitted the f/p during Mr Sidebotham's leave (my memo of 7/4) Mr Sidebotham may therefore wish to see before the d/f goes further.

O. P. Kirkman
22/5

Mr. Parkin -

I think you should see the foregoing minutes arising out of no 2 on the file.

I am in general agreement with the action proposed viz to consult the O.A.G. of Fiji further in a non-committal way to get certain facts clear, & make sure that this position in certain respects has not changed at the Fiji end since 1946.

Then in the light of the O.A.G.'s reply a submission can be made to Commissioner Ministers with a view to applying to the Pakistan Govt.

If you agree in principle, I will not trouble you with the details of the attached d/f. which I have not yet fully studied.

J. M. P.
22/5.

I agree. J. J. 23/5 afternoon

Mr W.A. Morris

You will see from Miss Mercer's minute of 6th Feb. that she thought you should see this file.

I do not think any further comment is called for from IRD until Fiji have answered the present despatch. There would be no point at this stage in introducing the question of Human Rights into the draft despatch. Even if no relaxation in the present set-up were to be agreed, I think our interest would be more on the side of relations with a Commonwealth country than with Human Rights.

W.A.M.

E.M. Wheat
24/5

Seen. No comments.

Copy of the despatch, when issued, should go to C.R.O?

W. A. M.
26/5

6/8

6 Fiji Des 242 Series as per draft Loose

5 JUN 1962

7 C.R.O. L/F w/c of (6) ← 5-6-62

8 C.R.O ——————— 10.6.62

Mr. Ruskin.

Your min. 29/1. Now send copy of (1) & encls. to H.O? Also note to discuss with Sir R. Garvey.

In view of the C.R.O. attitude in para 2(b) of (2), I do not think we need bring the Home Office into this. I have noted the matter to mention to Sir R. Garvey when he next comes to London. K.I.

C.A. Ruskin
13/6 Home

K.I.V.

Mr Jarvis brought you which to see ref Fiji + Nigeria points.

I have explained the position to Sir R. Garvey & he will look into the matter on arrival. Put by.

C.A. Clarkson
11/9 Africa

9 Fiji Sec 372 - 6.8.52

? enclosures to (6)

Dft h/w may issue

C.J. Jarvis
29/8/52 a/hm

(8/11) 10. Fiji - Sec. 368 - P. - w/enclt. as draft

1 SEP 1952

11 C.R.O. SA 35/85/1 2.9.52

Ref & any reply to 6.

(11) - I have explained over the telephone to Mr Duncan what has been happening. No written reply to (11) is necessary.

Put by and await reply to (6).

C.J. Jarvis
4/9/52 a/hm

12 C.R.O. SA 35/85/1 13.11.52

Further remender re (11)

I have spoken to Mr Duncan about (12), and promised to remind Fiji if nothing is heard during the next month. B.H. 1 month

17

A. Allen Duncan

14/11 At once

Pount file

(24/3) 13 Fiji Sav 80 ÷ cons ÷ 10 FEB 1953

14 Duncan (CRO) 4/f w/r (13) —— 11.2.53

Still no reply to 6. - reminded at 13.

G. Humphrey
25/3.

Wait a month

A.J. Danielewski
25/3/53
also

24/4

Receive reply from 25/3.

G. Humphrey
24.4.

Another month

A.J. Danielewski
24/4/53
also

24/5

15 C.R.O. SA 35/85/1 – 7-5-53

Ref 13 Hope for a reply before next session of UN Assembly in September.

2 drafts Rep.

R.H.H. Hall
8/5

(10/7) 16 Fiji Sav 215 : wns : 12.5.53.

17 Miles (CRO) 11.5.53

18 Fiji resp 288. 27.5.53

Ref (6) seeks approval to issue statement that the government does not propose to move in the matter.

(18) shows that there is no case for suggesting a reversal of policy to Ministers as public opinion in Fiji is still against the application of Mohammadan law relating to marriage, divorce and succession. Unless there has been any recent agitation in the Colony, which seems unlikely from (18), I doubt whether it is necessary or desirable for the Governor to make any announcement to the leaders of the Muslim Community until such time as they ask him to state the Government's position. I attach a draft letter to the C.R.O. for consideration.

R.H.H. Hall.

23rd June, 1953.

24/6.

Pl. see para 4(c) of 6. I assumed from the despatch referred to.

23/7

I agree with this draft subject to one point.

2. The summary in paragraph 6 of (18) apparently means, amongst other things, that consideration has not been given to granting of the concession indicated in paragraph 4(c) of (8) on 85125/48. The concession was that the Muslim law of succession should be applied in cases of intestacy. That would appear to me to be quite reasonable and it should go some way to satisfy Pakistan. Any concession to them which we could reasonably make should in my opinion be made. This one would enable us to say that if a Mohammedan wishes the Muslim rules of inheritance to apply, he need not make a will. I have not time to read through back papers to see how strongly we have put this before (paragraph 5 of my minute of 13/5/52 was not very strong) but I think we ought to go back to Fiji and ask them if they would have any objection to granting this concession. if so shall it is

28th July, 1953.

The point about Muslim law in case of intestacy was put to Fiji in para 4(c) of 8 on 85125/48. To clarify the Fiji Govt's views on this point as suggested by Sir K. Roberts's letter, we might telegraph as in draft herewith. (thought) It may however be rather unrealistic to make this enquiry when we are assured by the Governor that there is no demand for such a measure, vide para 6 of (8).

28/7

Mr. Sidebotham

I am afraid I have not made my point clear and Mr. Kirkman's draft telegram does not seem to me to meet it. If paragraph 6 of (18) is given its face value, it means that the concession in question has not even been considered. If this is so, then it is time Fiji considered it. Paragraph 4 of (18), which deals with succession, is irrelevant. The concession does not mean that the Muslim law of succession would be obligatory. It would still be open to any person to leave his property either in accordance with the laws based on the Quran or otherwise, but if a Muslim, intentionally or not, did not make a will, then his property would be distributed according to Muslim law. I cannot see that there would be any real objection to that, and if it would help the C.R.O. to placate Pakistan, it seems to me that we ought to press Fiji to do so.

2. There can be no great urgency about this and I suggest an S.O. letter rather than a telegram.

Mr. Kirkman.
S.O. ff. pl. putting point to Fiji. GBS 28/7
Sir K. Roberts's letter goes S/ff.

29th July, 1953.

19 CRO

Ref (17).

4.8.53.

20

Mr Sidebotham.

I discussed Sir K. Roberts-Wray's minute of 29/7 hurriedly with him before he left to go on leave. Unfortunately when I caught him I had not got the papers with me. It appears, however, that he did not think the despatch quite right enough. He felt that Fiji should be asked to introduce the concession even though there is no general demand for it from the Fiji unofficials. With respect I cannot agree that this would be the right course. I agree however that we should find out whether the Fiji Govt considers this concession objectionable in principle.

In view of (9) I suggest that the letter to the C.R.O. should crave with a further para added that we are discussing this point further with the Governor. We could then go out to the Governor by telegram as drafted or by S/C letter if you prefer it.

J. Whitehead
5/8.

Mr Sidebotham.

We spoke. The Legislative Assembly will meet either on the 15 Sept or the 15th Oct. We could therefore write S/C to Sir R Garvey & ask for a telegraphic reply. This would probably leave C.R.O. time to brief our delegation. Dft herewith. I am still doubtful whether this is the right line.

C A Clarkson
7/8.

I see no objection to making these enquiries.

Assistant. J.B.L.
7/8.

Mr Sidebotham.

Now? as in amended dft to CRO approved.

C A Clarkson
10/8.

20 Sir. R. Garvey. – 7.8.53.

21 R.C. Ormerod. (CRO) – 18.8.53.

No reply to 20 yet.

G. Humphreys
28/8

As C.R.O. have not pressed, following receipt of (21), by. 2 weeks.

11/9

C. Altham
25/8 Actg.

11/9

B/U as above.

G. Humphreys
11/9

22 Fiji Tel 30. 11-9-53

Ref 20 Can see no advantage in introducing a Law of Inheritance

I attached a draft on the lines of that prepared in June including the information in (22). Although when the former draft was prepared it was not the intention to send a copy of (18) to the C.R.O. and although they have now received a copy at (21) I suggest that it will be as well if we set out our views in full even if they are mainly a repetition of (18) as our letter will show them which parts of the Governor's despatch we do not consider suitable for the eyes of the Pakistan Government. In particular we do not attract attention to the last part of paragraph 3 (d) of (18). I have not included the contents of paragraph 1 of (22) in the letter to the C.R.O. as to my mind it does not strengthen the Governor's case. It would, however, be useful information if the Muslims in Fiji ~~has~~ made out a case for the introduction of the Muslim law of inheritance.

∠ want to

R.M. Hobden.
23rd September, 1953

I shd just like to make the incidental comment that the Pakistanis will not take much account of what Moslem women in Fiji may or may not think & will not regard these arguments on this basis as convincing - On the other hand, they can't admit this without embarrassing themselves about their public UN activities on behalf of equal rights for women etc. So they will be in a dilemma. There is, however, perhaps a fair point to be made that even if the Moslem women had strong feelings one way or another, they would hardly be likely to be vocal about it even in Fiji. This is not, however, something which we need point out ourselves.

I agree with the draft.

Brian
29/9

P.S. Incidentally, recent reports from Pakistan suggest that the faction of religious zealots has suffered a political set-back. The question might not therefore be troubling the Pakistan delegn as much as it did, & they might not even raise it this time.

Brian

I am sorry that our misunderstanding of "crisis" has delayed this.

Ian
2/10

23

Mr. Paskin

You have not been in this picture for some time, and I think you will be interested to see Nos. (18), (20) and the Governor's reply at (22) on this file.

I agree with the attached draft which it is proposed to send to the C.R.O., who are pressing us for a reply, indicating that we are not prepared to go any further on this question of the introduction of Muslim law in Fiji either as regards marriage or inheritance, and setting out in greater detail why the Governor is opposed to the latter.

Draft may I think issue, and the question of printing should be ~~subsequently~~ considered. Some of the earlier correspondence on this subject up to ~~December 1950~~ June 1952 has already been printed.

10. 10. 1953.

23 Ormerod. (CRO) ——

16. 10. 53

Mr. Houston. Ref + query minute above, Nos. 18 and 22 should now be printed in confirmation of views stated in B Pac 8. pl. (ending with No 6 on this file.

19/10

Printed on HKPac 5/186/01

Mr Sidebotham,

Printed copies of 18 and 22 now attached.

J. Mitchell, 11/11/53

Mr. Redhead. to see this pp for information.

Read. J.E. Redhead 24/11

C.R.O. are writing in reply to (23).

b.u. 2 weeks.

J.S. Redmall
25/11/53 a/cmd

9/12

B.U. as above

Addoughby
9/12

We understand that CRO do not propose to reply to the Pakistani Govt, but are preparing a brief based on No. 23 to be sent to all C.R.O. reps. abroad who are likely to have the question of the introduction of muslim law put to them.

? B.U. in 1 month.

R.H. Hobden
9/12/53.

J.S. Redmall
10/12 a/cmd

8/1

B.U. as above

Addoughby
4/1

b.u. 1 month.

J.S. Redmall
5/1/54 a/cmd

5/2

CLOSED
NO FURTHER ACTION TO BE TAKEN IN THIS FILE.
CONTINUED ON:-
...HRP 45/1/0/1 (1954-56)

23

25

The Church House,
Great Smith Street,
London, S.W.1.

HKP.173/1/01.

SA.35/85/1.

16th October, 1953.

Kirkman has now left the Office on 'secondment' overseas and we should be obliged if you will refer to his letter of the 18th August with which he enclosed a copy of a despatch from the Governor of Fiji about the possibility of introducing in Fiji the Mohammedan law relating to marriage, divorce, succession and guardianship. We have considered the Governor's reply and also a further communication from him about the possibility of introducing the Muslim Law of Inheritance and we are now able to let you have our views on the letter which Zia-ud-Din of the Pakistan Delegation to the United Nations General Assembly addressed to Mathieson on the 17th January, 1952.

In paragraph 2 of our despatch No. 242 of the 5th June, 1952 we made the point that immigrants to a country ought ordinarily to conform with the laws of the country of their adoption but that it might nevertheless be reasonable to make an exception, as regards matters of personal status, in the case of a sizeable community, permanently established, particularly where the preferred personal law of such a community had a religious basis. We then went on to rehearse the various considerations which have to be taken into account in deciding whether an exception on the above lines can possibly be made. In his reply the Governor has listed the following objections to making an exception in the present case:-

R.C. Ormerod, Esq.

/(a)

(a) The great majority of the non-Fijian population in the Colony are Hindus and they could well demand that the whole system of Hindu law be enacted in their favour including polygamy.

(b) An alteration of the laws as desired would appear to grant Muslims of Fiji greater concessions than are given to Muslims in the following Colonies - British Guiana, Brunei, Cyprus, Jamaica, Mauritius, North Borneo, Trinidad, Uganda.

(c) As far as can be ascertained, polygamy would offend the public conscience. Muslim women are not a vocal section of the community, but it is safe to say that if the Muslim laws with regard to polygamy and divorce were explained to them they would oppose their introduction. The Fijians would almost certainly support the Methodist Church in a campaign against the introduction of polygamy for any community in Fiji.

(d) It cannot be said that the demand for the alterations in the law has been sufficiently strong for it to be described as a general demand on the part of the Muslim community

/of

of the Colony. After twenty years of sporadic agitation on the part of three individuals, it is fairly certain that the greater part of the Muslim community does not understand the implications of the changes proposed.

You have already made it clear to the Pakistanis in the memorandum sent to Fowler in Paris under cover of Hampshire's letter F.4185/15 of the 14th December, 1951 that we would regard it as a retrograde step to restrict the freedom of a Muslim to dispose of his property as he wished. The Governor has again emphasised that there is no obstacle to a testator disposing of his possessions in accordance with Muslim law. He does not, however, regard it as the duty of Government to enforce piety upon the followers of a certain religion. The Governor has also pointed out that 90% of the Muslims in Fiji were born in the Colony and have little or no knowledge or interest in the Muslim law of inheritance and that although there is at present nothing to prevent a will being made in accordance with Muslim law there is no known record of this course having been adopted in any of the wills which have been registered in recent years. The Governor has also emphasized that the majority of Muslims are scarcely literate and that in the last three years 83% of the deceased adult Muslims died intestate leaving estates of very small value. The result of putting the onus upon the individual to make a will if he wishes to avoid the Muslim law of inheritance would be that a great number of Muslim estates would be distributed according to Muslim law without the knowledge of the deceased, and, incidentally, with the resultant uneconomic fragmentation of small estates. We,

/therefore,

therefore, see no advantage in introducing a law of inheritance for which there is no evidence of a desire by the majority of Muslims in Fiji, which is not generally understood and would involve the intestate distribution of property in a manner which would apparently be opposed to the wishes of the majority of the deceased persons.

As regards the application of the Muslim law of divorce the Governor considers that it is significant that the Muslim leaders in Fiji have been unable to produce any Muslim women who wish to see it introduced in Fiji. The Governor states that the system of dower is of little real protection to peasant women, who either do not claim it or have no ability to contest their rights in a court of law.

The Governor has drawn attention to one aspect of this matter which has been misrepresented in the Pakistani Press. The newspaper cutting sent to us by the Commonwealth Relations Office under cover of slip numbered F.4185/15/5A of the 22nd September, 1950, contained the statement that there were 25,000 Pakistanis in Fiji, mostly from the Hazara district. The Governor states that this is grossly incorrect and suggests that it may be of interest to the Pakistan Government to be aware of the correct position. Allowing for the increasing of population since the 1946 census the Governor estimates that there cannot now be more than 21,000 Muslims in Fiji. He states that the last census in which the original domicile of the Indian population in Fiji was recorded was that of 1936 and at that time the total number of Indians coming from

/West

West Pakistan and what is now the East Punjab was 2,132; of these over one thousand were Sikhs, of whom a considerable number were born in Fiji. The number of Fiji Muslims who were born in Pakistan or whose ancestors were born there must therefore be very small compared with the figure of 25,000 quoted.

The Governor has discussed this matter in Executive Council and states that the Council is firmly opposed to the introduction of Shariah law. He, therefore, proposes to inform the leaders of the Muslim community in the Colony that Government does not propose to move in the matter. We agree with the Governor's attitude, but we wonder if any public statement is necessary at the present time. If, however, the Governor confirms that this is in his view desirable, we would not see any objection.

I hope that this letter will give you sufficient material to enable you to reply to the Pakistan Government if you consider it necessary to do so after this long interval. We should be grateful if we could see the draft of any communication which you propose to send to them, and to know whether you have any comments to make before we reply to the Governor on the question of a public statement on this matter.

(SGD.) R. H. HOBDEN

File No. HKP 173/1/01

23

Mr. Hobden 23/9

Mr. Kirkman 23/9

Mr. West 24/9

Mr. Sir K. Roberts Wray 9/10

Mr. Sidebotham 10/10

Mr. Paskin 13/10

Permt. U.S. of S.

Parly. U.S. of S.

Minister of State

Secretary of State

C. D. 14 OCT D. 14/10

30

Your Reference SA. 35/85/1

Date

DRAFT S/o Letter

For Mr. ~~Kirkman's~~ Hobsons signature.

Kirkman has now left the office on secondment overseas and we should be obliged if you will

R. C. Omerod, Esq.,

Commonwealth Relations Office, (21)

S.W.1.

~~Will you please~~ refer to ~~my~~ his letter of the 18th August with which ~~I~~ he enclosed a copy of a despatch from the Governor of Fiji about the possibility of introducing in Fiji the Mohammedan law relating to marriage, divorce, succession and guardianship.

We have considered the Governor's reply and also a further communication from him about the possibility of introducing the Muslim Law of Inheritance and we are now able to let you have our views on the letter which Zia-ud-Din of the Pakistan Delegation to the United Nations General Assembly addressed to Mathieson on the 17th Jnauary, 1952.

enclosure to (1)

In paragraph 2 of our despatch No. 242 of the 5th June, 1952 we made the point that immigrants to a country ought ordinarily to conform with the laws of the country of their adoption but that it might nevertheless be reasonable to make an exception, as regards matters of personal status, in the case of a sizeable community, permanently established, particularly where the preferred personal law of such a community had a religious basis. We then went on to rehearse the various considerations which have to be taken into account in deciding whether an exception on the above lines can possibly be made. In his reply the Governor has listed the following objections to making an exception in the present case:-

(6)

FURTHER ACTION

(a) The great majority of the non-Fijian population in the Colony are Hindus and they could well demand that the whole system of Hindu law be enacted in their favour including polygamy.

(b) An alteration of the laws as desired would appear to grant Muslims of Fiji greater concessions than are given to Muslims in the following Colonies - British Guiana, Brunei, Cyprus, Jamaica, Mauritius, North Borneo, Trinidad, Uganda.

(c) As far as can be ascertained, polygamy would offend the public conscience. Muslim women are not a vocal section of the community, but it is safe to say that if the Muslim laws with regard to polygamy and divorce were explained to them they would oppose their introduction. The Fijians would almost certainly support the Methodist Church in a campaign against the introduction of polygamy for any community in Fiji.

(d) It cannot be said that the demand for the alterations in the law has been sufficiently strong for it to be described as a general demand on the part of the Muslim community of the Colony. After twenty years of sporadic agitation on the part of the three individuals, it is fairly certain that the greater part of the Muslim commmunity does not understand the implications of the changes proposed.

You have already made it clear to the Pakistanis in the memorandum sent to Fowler in Paris under cover of Hampshire's letter F.4185/15 of the 14th December, 1951 that we would regard it as a retrograde step to restrict the freedom of a Muslim to dispose of his property as he wished. The Governor has again emphasised that there is no obstacle to a testator disposing of his possessions in accordance with Muslim law. He does not, however, regard it as the duty of Government to enforce piety upon the followers of a certain religion. The Governor has also pointed out that 90% of the Muslims in Fiji were born in the Colony and have

(4) on 85125/51

/little

little or no knowledge or interest in the Muslim law of inheritance and that although there is at present nothing to prevent a will being made in accordance with Muslim law there is no known record of this course having been adopted in any of the wills which have been registered in recent years. The Governor has also emphasized that the majority of Muslims are scarcely literate and that in the last three years 83% of the deceased adult Muslims died intestate leaving estates of very small value. The result of putting the onus upon the individual to make a will if he wishes to avoid the Muslim law of inheritance would be that a great number of Muslim estates would be distributed according to Muslim law without the knowledge of the deceased. We, therefore, see no advantage in introducing a law of inheritance which is not generally understood and would involve the intestate distribution of property in a manner which would (apparently) be opposed to the wishes of the majority of the deceased persons.

As regards the application of the Muslim law of divorce the Governor considers that it is significant that the Muslim leaders in Fiji have been unable to produce any Muslim women who wish to see it introduced in Fiji. The Governor states that the system of dower is of little real protection to peasant women, who either do not claim it or have no ability to contest their rights in a court of law.

The Governor has drawn attention to one aspect of this matter which has been misrepresented in the Pakistani Press. The newpaper cutting sent to us by the C.R.O. under cover of slip numbered F.4185/15/5A of the 22nd September, 1950, contained the statement that there were 25,000 Pakistanis in Fiji, mostly from the Hazara district. The Governor states that this is grossly incorrect and suggests that it may be of interest

(14) on 85125/50

/to

to the Pakistan Government to be aware of the correct position. Allowing for the increasing of population since the 1946 census the Governor estimates that there cannot now be more than 21,000 Muslims in Fiji. He states that the last census in which the original domicile of the Indian population in Fiji was recorded was that of 1936 and at that time the total number of Indians coming from West Pakistan and what is now the East Punjab was 2,132; of these over one thousand were Sikhs, of whom a considerable number were born in Fiji. The number of Fiji Muslims who were born in Pakistan or whose ancestors were born there must therefore be very small compared with the figure of 25,000 quoted.

The Governor has discussed this matter in Executive Council and states that the Council is firmly opposed to the introduction of Shariah law. He, therefore, proposes to inform the leaders of the Muslim community in the Colony that Government does not propose to move in the matter. We agree with the Governor's attitude, but we wonder if any public statement is necessary at the present time. If, however, the Governor confirms that this is in his view desirable, we would not see any objection.

I hope that this letter will give you sufficient material to enable you to ~~send such~~ reply to the Pakistan Government ~~as~~ if you consider it necessary after this long interval. We should be grateful if we could see the draft of any communication which you propose to send to them, and to know whether you have any comments to make before we reply to the Governor on the question of a public statement on this matter.

22

34

INWARD TELEGRAM

TO THE SECRETARY OF STATE FOR THE COLONIES

COPY FOR REGISTRATION

FROM FIJI (Sir R. Garvey)

12 SEP 1953

Code D. 11th September, 1953.
R. 11th " " 07.00 hrs.

IMMEDIATE
No.307

Following for Sidebotham.

Begins.

20 Your demi-official letter HKP 173/1/01 of 7th August, 1953.

Muslim Law of Inheritance.

I am unable to support the introduction of the Muslim Law of Inheritance in the absence of evidence that it is desired by the majority of Muslims in Fiji. Even if such evidence existed, which it does not, inconvenience which would be caused to the judicial system by applying a complicated law which differs according to the particular sect to which deceased belonged, and which only a Muslim Judge or Barrister would presume to interpret in any particular case, and which would result in fragmentation of land holdings, would require serious consideration.

2. There are 21,000 Muslims in Fiji, 90% of whom were born in the Colony and have little or no knowledge or interest in the Muslim Law of Inheritance. This is established by the fact that although there is at present nothing to prevent a will being made in accordance with Muslim Law of Inheritance, there is no known record of this course having been adopted by any of the hundreds of wills which have been (corrupt group ?registered) within recent years.

3. I see no advantage therefore in introducing a Law of Inheritance which is not generally understood and which will involve the intestate distribution of property in a manner which will be opposed to the wishes of the majority of the deceased persons. It should not be overlooked that the majority of Muslims are scarcely literate, and in the last three years 83% of the deceased adult Muslims died intestate leaving estates of very small value. The result of putting onus upon the individual to make a will if he wishes to avoid the Muslim Law of Inheritance will be that a great number of Muslim estates will be distributed according to Muslim Law of Inheritance without the knowledge of the deceased.

Ends.

HKP. 173/1/01 [No. 22]. No. PROOF

THE GOVERNOR

to

THE SECRETARY OF STATE

35

(Received 11th September, 1953.)

TELEGRAM.

No. 307. Following for Sidebotham.

Begins.—Your demi-official letter HKP. 173/1/01 of 7th August, 1953*. Muslim Law of Inheritance.

I am unable to support the introduction of the Muslim Law of Inheritance in the absence of evidence that it is desired by the majority of Muslims in Fiji. Even if such evidence existed, which it does not, inconvenience which would be caused to the judicial system by applying a complicated law which differs according to the particular sect to which deceased belonged, and which only a Muslim Judge or Barrister would presume to interpret in any particular case, and which would result in fragmentation of land holdings, would require serious consideration.

2. There are 21,000 Muslims in Fiji, 90 per cent. of whom were born in the Colony and have little or no knowledge or interest in the Muslim Law of Inheritance. This is established by the fact that although there is at present nothing to prevent a will being made in accordance with Muslim Law of Inheritance, there is no known record of this course having been adopted by any of the hundreds of wills which have been (corrupt group ? registered) within recent years.

3. I see no advantage therefore in introducing a Law of Inheritance which is not generally understood and which will involve the intestate distribution of property in a manner which will be opposed to the wishes of the majority of the deceased persons. It should not be overlooked that the majority of Muslims are scarcely literate, and in the last three years 83 per cent. of the deceased adult Muslims died intestate leaving estates of very small value. The result of putting onus upon the individual to make a will if he wishes to avoid the Muslim Law of Inheritance will be that a great number of Muslim estates will be distributed according to Muslim Law of Inheritance without the knowledge of the deceased.—*Ends.*

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* HKP. 173/1/01 [No. 20]: not printed.

Fiji, Affairs in—(C.44245/2). 12.

C.O. **DRAFT AND RECORD COPY**

21

36

REGISTERED No.

LETTER SENT .....

DATE

DRAFT

MR. Kirkman 18/8/53

MR. .....

MR. .....

SA35/85/1

HKP 173/1/01

18 August, 1953

ENCLOSURES (19)

(6).

Dupl (18)

Will you please refer to your letter of the 4th August about the possibility of introducing in Fiji the Mohammedan law relating to marriage, divorce, succession and guardianship. We have received from the Governor of Fiji, in reply to our despatch No. 242 of the 5th June, 1952, an up to date account of the situation in the territory in his despatch No. 288 of the 27th May, 1953, of which I enclose a copy.

I'm afraid that we are still not ready with our views as to the final reply which should be given to Pakistan on this subject, as we have had to take up one point in the Governor's reply in a letter sent on the 7th August. In view, however, of paragraph 2 of your letter of the 4th August, we have asked the Governor to let us have a reply by telegram and we will write to you giving our final views as soon as possible.

FURTHER ACTION

(C. A. Kirkman)

To

R. C. OMEROD, ESQ.,
COMMONWEALTH RELATIONS OFFICE.

[7512] Wt. 34283/699 50m. 12/47 C.N.Ld. 748

File No. HKP 173/1/01

Draft + Record Copies at (21)

37

Mr. Hobden 24/6

Mr. Kirkman 24/6.

Mr. West away indisposed 28/6

Sir K. Roberts-Wray

Mr. Sidebotham

Permt. U.S. of S.

Parly. U.S. of S.

Minister of State

Secretary of State

Your Reference ~~E.1185/15~~ SA 35/85/1 Date

DRAFT

For Mr. Kirkman's Signature

~~F.S. Wallis~~
~~W. J. Smith, Esq.~~
R.C. Omerod Esq.
Commonwealth Relations Office, S.W.1

(6) (19)

4 pages

....., I will you please ~~W.J. Smith~~ refer to your letter of the 18th ~~I wrote to you on the 10th June~~ about the copy which ~~we had sent to you of our despatch to Fiji~~ (possible effect of its publication in Fiji) about the ~~introduction there of~~ the Mohammadan law relating to marriage, divorce, succession and guardianship.

(6)

(in reply to our despatch No. 242 of the 5th June 1952)

We have ~~now~~ received from the Governor of Fiji an up to date account of the feelings of the various communities in the Colony on the question and I am ~~not~~ now able to let you have our ~~agreed~~ views on the letter which Zia-ud-Din of the Pakistan Delegation to the United Nations General Assembly addressed to Mathieson on the 17th January, 1952.

encl. to (1)

2. In paragraph 2 of our despatch No. 242 of the 5th June, 1952 we made the point that immigrants to a country ought ordinarily to conform with the laws of the country of their adoption but that it might nevertheless be reasonable to make an exception, as regards matters of personal status, in the case of ~~of~~ a sizeable community, permanently established, particularly where the preferred personal law of such a community had a religious basis. We then went on to rehearse the various considerations which have to be taken into account in deciding whether an exception on the above lines can possibly be made. In his reply the Governor has listed the following objections to making an exception in the present case:-

/(a)

FURTHER ACTION

(27686) (2) Wt. 27142—5592 5m pads 10/50 G.S.St.

(a) The great majority of the non-Fijian population in ~~this~~ Colony are Hindus and they could well demand that the whole system of Hindu law be enacted in their favour including polygamy.

(b) An alteration of the laws as desired would appear to grant Muslims of Fiji greater concessions than are given to Muslims in the following Colonies - British Guiana, Brunei, Cyprus, Jamaica, Mauritius, North Borneo, Trinidad, Uganda.

(c) As far as can be ascertained, polygamy would offend the public conscience. Muslim women are not a vocal section of the community but it is safe to say that if the Muslim laws with regard to polygamy and divorce were explained to them they would oppose their introduction. The Fijians would almost certainly support the Methodist Church in a campaign against the introduction of polygamy for any community in ~~this country~~ Fiji.

(d) It cannot be said that the demand for the alterations in the law has been sufficiently strong for it to be described as a general demand on the part of the Muslim community of the Colony. After twenty years of sporadic agitation on the part of the three individuals it is fairly certain that the greater part of the Muslim community does not understand the implications of the changes proposed.

3. You have already made it clear to the Pakistanis in this memorandum sent to Karachi under cover of Humphrin's letter F.4785/6/5 of the 14th December 1951 that we would regard it as a retrograde step to restrict the freedom of a Muslim to dispose of his property as he wished. The Governor has again emphasised that there is no obstacle to a testator disposing of his possessions ~~in accordance~~ with Muslim law. He does not, however, regard it as the duty of Government to enforce piety upon the followers of a certain religion.

4 8512S/51

4. As regards the application of the Muslim law of divorce the Governor considers that it is significant that the Muslim leaders in Fiji have been unable to produce any Muslim women who wish to see it introduced in Fiji. The Governor states

/that

that the system of dower is of little real protection to peasant women who either do not claim it or have no ability to contest their rights in a court of law.

5 The Governor has drawn attention to one aspect of this matter which has been misrepresented in the Pakistani Press. The newspaper cutting sent to us by the C.R.O. under cover of slip numbered F 4185/15/5A of the 22nd September, 1950, contained the statement that there were 25,000 Pakistanis in Fiji, mostly from the Hazara district. The Governor states that this is a grossly incorrect ~~statement~~ Govt and suggests that it may be of interest to the Pakistan ~~Delegation~~ to be aware of the correct position. Allowing for the increasing of population since the 1946 census the Governor estimates that there cannot now be more than 21 20,000 Muslims in Fiji. He states that the last census in which the original domicile of the Indian population in Fiji was recorded was that of 1936 and at that time the total number of Indians coming from West Pakistan and what is now the East Punjab was 2,132; of these over one thousand were Sikhs, of whom a considerable number were born in Fiji. The number of Fiji Muslims who were born in Pakistan or whose ancestors were born there must therefore be very small compared with the figure of 25,000 quoted.

The Governor has discussed this matter in Executive Council and states that the Council is firmly opposed to the introduction of Shariah. He therefore proposes to inform the leaders of the Muslim community in the Colony that Government does not propose to move in the matter. We agree (with one possible exception, see below) that the Fiji Government should not move in the matter. We wonder if any public statement is necessary at the present time, but if the Governor confirms that this is in his view desirable, we would not see any objection.

I hope that this letter will give you sufficient material to enable you to send such reply to the Pakistan Government as you consider necessary after this long interval. We should be grateful if we could see the draft of any communication which you propose to send to them.

(14) on 85125/50

The exception referred to in the paragraph above concerns the introduction of Muslim law in cases of intestacy. For your own information only we have written to the Governor asking him to consider whether he would see any objection to us discussing this question with the Pakistani Government. We thought that it would be desirable to do so to preserve good relations with the Pakistanis, but we would of course not wish to appear to ~~~~ Pakistan ~~~~ unless the C.R.O. felt that this would ~~~~ ~~~~ Pakistan ~~~~ Govt ~~~~ Govt and Pakistan Govt concerned.

Letter with the proposed replies with the Pakistan Govt to be sent.

20

40

Colonial Office,
The Church House,
Great Smith Street,
London, S.W.1.

HKP 173/1/01

7th August, 1953.

My dear Garvey,

Will you please refer to your despatch No. 288 of the 27th May about the representations we have had from Pakistan for the introduction of Muslim personal law. We are very grateful for the ammunition contained in your despatch but there is one further point on which we should like to have your views. The Commonwealth Relations Office fear that the Pakistan delegation at the United Nations may raise the whole question again when the General Assembly meets; the date may be either the 15th September or the 1st October. We should therefore like to have your views by telegram as soon as possible.

The point is whether, if it proved to be a useful negotiating point, you would be prepared to introduce the concession that the Muslim law of inheritance should apply to Muslims who die intestate. There would be no compulsion since a Muslim could always escape it by making a will. Para 6 of your despatch suggests that you have not thought it necessary to consider this possibility seriously since the popular demand does not justify it, but the Secretary of State's Legal Adviser considers that it is a concession which might reasonably be made, as it has in one or two other territories where they have not gone the whole way

/to

Sir Ronald Garvey, K.C.M.G., M.B.E.,

to make the Muslim law of inheritance applicable to Muslims in all circumstances.

We cannot say at this stage whether we shall have to ask you officially to consider making this concession but we should like to know what your official attitude would be if the Secretary of State did make the request.

Yours ever

(Sgd) John B. Sidebotham

(J. B. Sidebotham)

19

COMMONWEALTH RELATIONS OFFICE
DOWNING STREET
LONDON, S.W.1

42

Whitehall 2323/*Ext.*
Your Reference:
Please quote in reply: SA 35/85/1

4th August, 1953.

Dear Kirkman,

17 Would you please refer to your letter to Miles of this Office of the 11th May, No. HKP 173/1/01 about the possibility of applying Mohammedan law to Muslims in Fiji.

I have recently taken over this subject from Miles and note that we have not yet heard from the Fiji Government on the matter. While I am loath to press this rather tedious enquiry on the Fiji Government there is still time for us to hear something before the main Session of the United Nations General Assembly starts and it would certainly be helpful if we could have the information to forestall awkward Pakistani enquiries or speeches before then.

Yours sincerely
R C Ormerod
(R. C. Ormerod)

C. A. Kirkman, Esq.,
Colonial Office.

C44245

GOVERNMENT HOUSE,
Suva, Fiji.

FIJI

288

27th May, 1953.

43

Sir,

I have the honour to refer to your despatch No. 242 dated 5th June, 1952, regarding the introduction into Fiji of Mohammadan law relating to marriage, divorce succession and guardianship.

2. An enclosure to your confidential savingram No. 223 of 7th October, 1950, contained a statement by Haji Mohd Hasan printed in the newspaper "Dawn" of Karachi to the effect that there were 25,000 Pakistanis in Fiji, mostly from the Hazara district. In view of this grossly incorrect statement it might be of interest to the Pakistan Delegation to U.N.O. to know the correct position. On the increase of population since our 1946 Census there cannot now be more than about 20,000 Muslims in Fiji. The last Census in which the original domicile of the Indian population in Fiji was recorded was that of 1936. At that time the total number of Indians coming from West Pakistan and what is now the East Punjab was 2132; of these over one thousand were Sikhs. It is safe to assume that a considerable number of the thousand Muslims were born in Fiji. Thus the number of Pakistanis in Fiji is reduced to a handful compared with the 25,000 of Haji Mohd Hasan.

3. It would appear that the alterations in the law desired by the Pakistan Delegation would be open to every objection contained in paragraph 2 of your despatch.

(a) The great majority of the non-Fijian population in this Colony are Hindus and they could well demand that the whole system of Hindu law be enacted in their favour including polygamy.

(b) An alteration of the laws as desired would appear to grant Muslims of Fiji greater concessions than are given to Muslims in the following Colonies - British Guiana, Brunei, Cyprus, Jamaica, Mauritius, North Borneo, Trinidad, Uganda.

(c) As far as can be ascertained, polygamy would offend the public conscience. Muslim women are not a vocal section of the community but it is safe to say that if the Muslim laws with regard to polygamy and divorce were explained to them they would oppose their introduction. The Fijians would almost certainly support the Methodist Church in a campaign against the introduction of polygamy for any community in this country.

CHIEF REGISTRAR'S OFFICE
12 JUN 1953
COLONIAL OFFICE

The Right Honourable

The Secretary of State for the Colonies

(d) It cannot be said that the demand for the alterations in the law has been sufficiently strong for it to be described as a general demand on the part of the Muslim community of the Colony. After twenty years of sporadic agitation on the part of the three individuals it is fairly certain that the greater part of the Muslim community does not understand the implications of the changes proposed. No community will fight for its religious ideals with greater zeal than will the Muslims. It is certain that if the Muslim community had been suffering under a strong sense of grievance upon matters which it considered vital to its religion, Government would have encountered severe and sustained agitation many years ago.

For the average Muslim peasant of Fiji, as for the average peasant of Pakistan, the privilege of being allowed more than one wife is purely academic - he cannot afford it. With regard to polygamy the Delegation appears to have confused a matter which is permissive under Muslim law with a matter which is of the essence of the Muslim faith.

4. In Fiji, a Muslim may leave his estate according to Muslim law but it would appear to be a retrograde step to make the Muslim law of succession obligatory. If, as the Pakistan Delegation would seem to assert, it is the pious duty of Muslims to follow the laws of succession laid down in the Quran, doubtless all good Muslims in Fiji will leave their estates accordingly. It is, however, hardly the duty of any Government to enforce piety upon the followers of a certain religion. Not a few Muslims in Fiji would resent a rejection of their applications for a licence to consume alcohol on the ground that a pious Muslim should not drink alcohol. Whatever the Quranic law of inheritance may have to commend it, the Pakistan Delegation must admit that it leads to an uneconomic fragmentation of small estates and that many Pakistanis are put to the necessity of making gifts during their lifetime in order to avoid this fragmentation.

5. The Muslim law of divorce is an extremely one sided business and it is significant that the Hasan brothers have been unable to produce any Muslim women who approve of it. The system of dower is of little real protection to peasant women who either do not claim it or have no ability to contest their rights in a court of law.

6. To sum up, the answers in so far as can be ascertained to the questions in paragraph 4 of your despatch are in the negative as regards (a) (c) and (d) and in the affirmative as regards (b).

7. I have consulted my Executive Council on this question since my arrival in the Colony and the Council is firmly opposed to the introduction of Shariah.

Subject to your approval I propose to inform the leaders of the Muslim community here that Government does not propose to move in this matter.

I have the honour to be,

Sir,

Your most obedient, humble servant,

R.H. Clarke

Governor.

3

C 44245-1 12 /53

HKP.173/1/01 [No. 18]. No. PROOF

THE GOVERNOR

to

THE SECRETARY OF STATE

46

(Received 12th June, 1953.)

No. 288.

27th May, 1953.

Sir,

I have the honour to refer to your despatch No. 242 dated 5th June, 1952*, regarding the introduction into Fiji of Mohammadan law relating to marriage, divorce, succession and guardianship.

2. An enclosure to your confidential savingram No. 223 of 7th October, 1950†, contained a statement by Haji Mohd Hasan printed in the newspaper "Dawn" of Karachi to the effect that there were 25,000 Pakistanis in Fiji, mostly from the Hazara district. In view of this grossly incorrect statement it might be of interest to the Pakistan Delegation to U.N.O. to know the correct position. On the increase of population since our 1946 Census there cannot now be more than about 20,000 Muslims in Fiji. The last Census in which the original domicile of the Indian population in Fiji was recorded was that of 1936. At that time the total number of Indians coming from West Pakistan and what is now the East Punjab was 2,132; of these over one thousand were Sikhs. It is safe to assume that a considerable number of the thousand Muslims were born in Fiji. Thus the number of Pakistanis in Fiji is reduced to a handful compared with the 25,000 of Haji Mohd Hasan.

3. It would appear that the alterations in the law desired by the Pakistan Delegation would be open to every objection contained in paragraph 2 of your despatch.

(*a*) The great majority of the non-Fijian population in this Colony are Hindus and they could well demand that the whole system of Hindu law be enacted in their favour including polygamy.

(*b*) An alteration of the laws as desired would appear to grant Muslims of Fiji greater concessions than are given to Muslims in the following Colonies—British Guiana, Brunei, Cyprus, Jamaica, Mauritius, North Borneo, Trinidad, Uganda.

(*c*) As far as can be ascertained, polygamy would offend the public conscience. Muslim women are not a vocal section of the community but it is safe to say that if the Muslim laws with regard to polygamy and divorce were explained to them they would oppose their introduction. The Fijians would almost certainly support the Methodist Church in a campaign against the introduction of polygamy for any community in this country.

(*d*) It cannot be said that the demand for the alterations in the law has been sufficiently strong for it to be described as a general demand on the part of the Muslim community of the Colony. After twenty years of sporadic agitation on the part of the three individuals it is fairly certain that the greater part of the Muslim community does not understand the implications of the changes proposed. No community will fight for its religious ideals with greater zeal than will the Muslims. It is certain that if the Muslim community had been suffering under a strong sense of grievance upon matters which it considered vital to its religion, Government would have encountered severe and sustained agitation many years ago.

For the average Muslim peasant of Fiji, as for the average peasant of Pakistan, the privilege of being allowed more than one wife is purely academic—he cannot afford it. With regard to polygamy the Delegation appears to have confused a matter which is permissive under Muslim law with a matter which is of the essence of the Muslim faith.

4. In Fiji, a Muslim may leave his estate according to Muslim law but it would appear to be a retrograde step to make the Muslim law of succession obligatory. If, as the Pakistan Delegation would seem to assert, it is the pious duty of Muslims to follow the laws of succession laid down in the Quran, doubtless all good Muslims in Fiji will leave their estates accordingly. It is, however, hardly the duty of any Government to enforce piety upon the followers of a certain religion. Not a few Muslims in Fiji would resent a rejection of their applications for a licence to consume alcohol on the ground that a pious Muslim should not drink alcohol. Whatever the Quranic law of inheritance may have to commend it, the Pakistan Delegation must admit that it leads to an uneconomic fragmentation of small estates and that many Pakistanis are put to the necessity of making gifts during their lifetime in order to avoid this fragmentation.

5. The Muslim law of divorce is an extremely one sided business and it is significant that the Hasan brothers have been unable to produce any Muslim women who approve of it. The system of dower is of little real protection to peasant women who either do not claim it or have no ability to contest their rights in a court of law.

6. To sum up, the answers in so far as can be ascertained to the questions in paragraph 4 of your despatch are in the negative as regards (*a*), (*c*) and (*d*) and in the affirmative as regards (*b*).

7. I have consulted my Executive Council on this question since my arrival in the Colony and the Council is firmly opposed to the introduction of Shariah.

Subject to your approval I propose to inform the leaders of the Muslim community here that Government does not propose to move in this matter.

I have, &c.,

R. H. GARVEY,

Governor.

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* No. 4 in Western Pacific, No. 8.

† 85125/50 [No. 16): not printed.

17

SA 35/85/1
HKP 173/1/01

47

11 May, 1953.

Thank you for your letter of the 7th May about the possibility of applying Mohammedan law to Muslims in Fiji.

I am sorry that it is taking such a long while to obtain the views of the Fiji Government. We have sent them a further reminder and I hope that their reply will not be long delayed.

(Sd) C. A. KIRKMAN

F. S. MILES ESQ.

16

Saving.

From the Secretary of State for the Colonies.

To the Officer Administering the Government of Fiji

Date 12 May, 1953.

No. 215 Saving.

48

My despatch No. 242 of the 5th June, 1952
and my savingram No. 80 of the 10th February.

Muslims in Fiji.

Grateful if reply may be expedited.

SECRET.

15

COMMONWEALTH RELATIONS OFFICE
DOWNING STREET
LONDON, S.W.1

Whitehall 2323/Ext. 24
Your Reference: HKP 173/1/01
Please quote in reply: SA 35/85/1

7th May, 1953.

49

Dear Kirkman,

13 Would you please refer to Colonial Office Saving telegram No. 80 of 10th February to Fiji about the possibility of applying Mohammedan law to Muslims in the colony?

We hope the Government of Fiji's answer will not be delayed much longer. We ought to make sure of having a reply delivered to the Pakistan Government before the next session of the United Nations Assembly in September if we are to avoid more bitter speeches by Sir Zafrullah Khan.

Yours sincerely,

F. Stephen Miles.

(F.S.Miles)

C.A. Kirkman, Esq.,
Colonial Office.

HKP.173/1/01

Saving

13

From the Secretary of State for the Colonies.

To the Officer Administering the Government of FIJI

Date 10 February, 1953.

50

No. 80 **Saving**

My despatch No.242 of the 5th June, 1952.

Muslims in Fiji.

Grateful to learn when you expect to be able to reply.

12

51

COMMONWEALTH RELATIONS OFFICE

WHItehall 2323
Ext.

DOWNING STREET

Your reference HKP: 173/1/01

Please quote in reply: SA 35/85/1

LONDON S.W.1

13th November, 1952.

Dear Kirkman,

// With reference to my letter of 2nd September we should be glad to learn whether the Fijian authorities have yet commented on the possibility of applying Mohammedan law to Muslims in the colony.

Yours sincerely,

S.F. Duncan

(S.F. St.C. Duncan)

C.A. Kirkman, Esq.,
Colonial Office.

52

11

COMMONWEALTH RELATIONS OFFICE

WHItehall 2323
Ext.

DOWNING STREET

Your reference : HKP 173/1/01
Please quote in reply: SA 35/85/1.

LONDON S.W.1

2 September, 1952.

Dear Kirkman,

8 With reference to your letter of 10th June about the introduction of Mohammedan law for Muslims in Fiji, we should be grateful to learn whether you have yet received a reply from the Government of Fiji to your despatch 6 No. 242 of 5th June.

Yours sincerely,

S.F.St.C. Duncan

(S.F.St.C. Duncan)

C.A. Kirkman, Esq.,
Colonial Office.

HKP 173/1/01

10

Saving

From the Secretary of State for the Colonies.

To the Officer Administering the Government of FIJI

Date 1 September 1952

No. 368 Saving PRIORITY

53

Your savingram No. 372 of the 6th August, 1952.

Muslim Law.

I much regret the error in enclosing in my despatch No. 242 of the 5th June the letter referred to at (ii) of your paragraph 1 instead of the aide memoire to which reference was made in my despatch. A copy of the aide-memoire is now enclosed.

SECER.

SAVING.

Acting
From the Governor of Fiji.

To the Secretary of State for the Colonies.

54

Date 6th August, 1952.

No. 372 Saving.

HKP/173/1/01

6 Your despatch No. 242 of 5th June about MUSLIM LAW had four enclosures -

(i) copy of one-page letter dated 17th December 1951 signed by W.A.C. Mathieson and addressed to the Mian Zia-ud-Din of the Pakistan Delegation to the United Nations.

(ii) copy of one-page letter dated 14th December 1951 signed by G.P. Hempshire and addressed to R.W.D. Fowler of the United Kingdom Delegation.

(iii) copy of two-page letter dated 17th January 1952 signed by M. Ziand Din and addressed to Mathieson.

(iv) copy of eighteen page memorandum dated 4th March 1952 and showing provision made in various Colonies relating to marriage, divorce, polygamy, inheritance and guardianship in accordance with Mohammedan law.

2. It appears that (ii) has been enclosed in error in place of aide-memoire referred to in the text of (i). Grateful if copy of aide-memoire can be forwarded as early as possible.

ACTING GOVERNOR.

REGISTRY
18 AUG 1952

8

55

F.4185/15
HKP 175/1/01

10 June, 1952

Will you please refer to my letter to Hampshire of the 31st March and our despatch to Fiji No. 242 of the 5th June, of which a copy was sent to you.

I am extremely sorry that after the promise in my letter to Hampshire and several reminders from your Department on the telephone, we did not after all send the despatch over to you in draft. It was of course always our intention to let you see the despatch in draft and our failure to do this was the result of an oversight. I hope you will agree, however, that the despatch is quite innocuous and that no harm has been done. The object of the despatch is merely to get information from Fiji on the points which appear to us to be significant as suggested in Prichard's letter to Sidebotham of the 22nd March, 1952. We did not feel able to go as far as to ask the Governor of Fiji to make a new and independent assessment in the light of the latest situation in Fiji, as suggested by Prichard in his final paragraph, because this would have involved the reversal of previous policy and we should have had to submit the papers to Ministers in this Office before doing this. We do not wish to submit the matter to Ministers until we have the present day facts of the matter and it was therefore necessary to adopt a non-committal attitude in our despatch No. 242.

You will no doubt let me know if you have any comments on the despatch and we shall, of course, get in touch with you again as soon as we hear from the Acting Governor.

(Sd) C. A. KIRKMAN

W. J. SMITH, ESQ.,
COMMONWEALTH RELATIONS OFFICE.

(C. A. Kirkman)

C.O. **DRAFT AND RECORD COPY**

8

REGISTERED No.

LETTER SENT

DATE

DRAFT

MR. Kirkman

MR.

MR.

56

P.4135/15
MEP 173/1/01

10 June, 1952

ENCLOSURES

Will you please refer to my letter to Hampshire of the 31st March and our despatch to Fiji No. 242 of the 5th June, of which a copy was sent to you.

I am extremely sorry that after the promise in my letter to Hampshire and several reminders from your Department on the telephone, we did not after all send the despatch over to you in draft. It was of course always our intention to let you see the despatch in draft and our failure to do this was the result of an oversight. I hope you will agree, however, that the despatch is quite innocuous and that no harm has been done. The object of the despatch is merely to get information from Fiji on the points which appear to us to be significant as suggested in Prichard's letter to Sidebotham of the 22nd March, 1952. We did not feel able to go as far as to ask the Governor of Fiji to make a new and independent assessment in the light of the latest situation in Fiji, as suggested by Prichard in his final paragraph, because this would have involved the reversal of previous policy and we should have had to submit the papers to Ministers in this Office before doing this. We do not wish to submit the matter to Ministers until we have the present day facts of the matter and it was therefore necessary to adopt a non-committal attitude in our despatch No. 242.

FURTHER ACTION

To

You will no doubt let me know if you have any comments on the despatch and we shall, of course, get in touch with you again as soon as we hear from the Acting Governor.

(Sd) C. A. KIRKMAN

(12/47) [8174A] Wt. 14882/739 50m. 6/48 C.N.Ld. 748

W. J. SMITH, ESQ.,
COMMONWEALTH RELATIONS OFFICE.

(C. A. Kirkman)

6

57

HKP 173/1/01

FIJI

NO. 242

COLONIAL OFFICE,
The Church House,
Great Smith Street,
London, S.W.1.

5th June 1952.

PRINTED FOR USE OF Western Pacific No. 8 COLONIAL OFFICE

Sir,

I have the honour to refer to my predecessor's savingram No. 223 Confidential of the 7th October, 1950 and earlier related correspondence regarding the introduction into Fiji of the Mohammedan law relating to marriage, divorce, succession and guardianship, and to inform you that there has subsequently been further correspondence on this matter between the Pakistan and United Kingdom Delegations to the United Nations. In this connection I enclose for your information copies of a letter dated the 17th December, 1951 addressed to the Pakistan Delegation, enclosing an aide memoire on the subject and of the reply received to this letter.

2. You will observe from the correspondence that the Pakistan Government does not consider the present position in Fiji with regard to inheritance, polygamous marriage, and divorce to be satisfactory and argues in favour of the introduction of Muslim law for Muslims in the Colony. You will already be aware from Mr. Creech Jones' despatch No. 33 of the 7th May, 1947 and of Lord Listowel's despatch No. 33 of the 15th April, 1949, of the difficulties which would be seen in approving any such change in the law of Fiji. It is clear that immigrants to a country ought ordinarily to conform with the laws of the country of their adoption but it might nevertheless be reasonable to make an exception, as regards matters of personal status, in the case of a sizeable community, permanently established, particularly where the preferred personal law of such a community has a religious basis. In considering whether in a particular case an exception should be made and if so how far it should go it seems necessary to decide whether the application of the personal law of the community concerned would be open to any objection on the grounds that:-

(a) It would involve giving greater concession to that community than are given to other communities with the same background in the same Colony. For example a Muslim community in a Colony ought not to have greater concessions than are given to the Hindu community with the same background in that Colony;

(b) It would involve giving greater concessions to that community than are given to communities with similar backgrounds in other Colonies. For example a Muslim community in Fiji ought not to be treated differently from Muslim or Hindu communities having similar backgrounds in any other Colony (in this connection I enclose a copy of a memorandum showing the relevant legislation in other Colonies);

(c) It would offend the public conscience e.g. by providing, in the case of Muslim law, for polygamy or a Muslim form of divorce;

(d) It would be contrary to the wishes of a substantial number of the particular community concerned.

/3. Bearing

THE OFFICER ADMINISTERING

THE GOVERNMENT OF

FIJI.

3. Bearing in mind the criteria set out above, the points raised in the letter from the Pakistan Delegation have been examined in the Colonial Office. It is, however, difficult to ensure that such an examination is both full and satisfactory in the absence of up-to-date information regarding the current state of affairs in Fiji with regard to the matter. I should accordingly be obliged to receive a statement of your views and also any comments you may have on the points raised in the enclosed letter from the Pakistan Delegation.

4. I should also be obliged to receive information on the following particular points:-

(a) Whether there has been any change in the views of the various communities in Fiji on this matter since Sir Alexander Grantham's despatch No. 122 of the 2nd October, 1946.

(b) Whether the estimate of the proportion of Ahmeddiyas to orthodox Muslims in Fiji which was given in paragraph 6 of that despatch is still accurate.

(c) Whether there has been any strong demand over the course of the past few years for the adoption of Muslim law in cases of intestacy and whether consideration has been given to granting the concession in this respect indicated in paragraph 4(c) of Lord Listowel's despatch No. 33 of the 15th April, 1949.

(d) Whether any demand which does exist for the alteration of the law as regards intestacy or any of the other subjects on which there has been a demand that Muslims should be governed by Muslim law, has been sufficiently strong for it to be properly describable as a general demand on the part of the Muslim community in the Colony.

I have the honour to be,
Sir,
Your most obedient,
humble servant,

HENRY HOPKINSON

Affix it to the envelope
ess panel) and post marks.

HKP 173/1/01

6

1532 Wt18027/5526 100m 7/50 F A Gp58

C.O.

Mr. Fairclough 21/5
Mr. Kirkman 22/5
Mr. Med- 24/5
Mr. Sir K. Roberts Gray 26/5
Mr. Sidebotham 24/5.

Permt U.S. of S.
Parly. U.S. S.
Minister of State
Secretary of State

Your Reference.....

C D 62
R. 27 MAY
D. 27

59

PRINTED FOR USE OF Western Pacific No 8 COLONIAL OFFICE

DRAFT

FIJI
NO. 242
(16) on 85125/50
O.A.G.

- 5 JUN 1952

Enclose copy of the Encl. to (5) on 85125/51 with as ~~in~~encl. of (4) on same file.

Enclose copy of the 2nd encl. to (1) opposite

FURTHER ACTION

(20)
85125/44-46
(8)
85125/48

Sir,

I have etc. to refer to my predecessor's savingram No.223 Confidential of the 7th October, 1950 and earlier related correspondence regarding the introduction into Fiji of the Mohammedan law relating to marriage, divorce, succession and guardianship, and to inform you that there has subsequently been further correspondence on this matter between the Pakistan and United Kingdom Delegations to the United Nations. In this connection I enclose for your information copies of a letter dated the 17th December, 1951 addressed to the Pakistan Delegation, enclosing an aide memoire on the subject and of the reply received to this letter.

2. You will observe from the correspondence that the Pakistan Government does not consider the present position in Fiji with regard to inheritance, polygamous marriage, and divorce to be satsifactory and argues in favour of the introduction of Muslim law for Muslims in the Colony. You will already be aware from Mr. Creech Jones' despatch No.33 of the 7th May, 1947 and of Lord Listowel's despatch No.33 of the 15th April 1949, of the difficulties which would be seen in approving any such change in the law of Fiji. It is clear that immigrants to a country ought ordinarily to conform with the laws of the country of their adoption but it might nevertheless be reasonable to make an

/exception

exception, as regards matters of personal status, in the case of a sizeable community, permanently established, particularly where the preferred personal law of such a community has a religious basis. In considering whether in a particular case an exception should be made and if so how far it should go it seems necessary to decide whether the application of the personal law of the community concerned would be open to any objection on the grounds that:-

(a) It would involve giving greater concession to that community than are given to other communities with the same background in the same Colony. For example a Muslim community in a Colony ought not to have greater concessions than are given to the Hindu community with the same background in that Colony;

(b) It would involve giving greater concessions to that community than are given to communities with similar backgrounds in other Colonies. For example a Muslim community in Fiji ought not to be treated differently from Muslim or Hindu communities ~~have~~ having similar backgrounds in any other Colony (In this connection I enclose a (copy No 2) memorandum showing the ~~legislation~~ relevant legislation in other Colonies) copy No 3

(c) It would offend the public conscience e.g. by providing, in the case of Muslim law, for polygamy or a Muslim form of divorce;

(d) It would be contrary to the wishes of a substantial number of the particular community concerned, ~~taken as a whole~~.

[I think this alteration should be made. RBG]

3. Bearing in mind the criteria set out above, the points raised in the letter from the Pakistan Delegation have been examined in the Colonial Office. It is, however, difficult to ensure that such an examination is both full and satisfactory in the absence of up-to-date information regarding the current state of affairs in Fiji with regard to the matter. I should accordingly be obliged to receive a statement of your views ~~on this matter~~ and also any comments you may have on the points raised in the enclosed letter from the Pakistan Delegation.

4. I should also be obliged to receive information on the following particular points:-

(a) Whether there has been any change in the views of the

/various

G.R.

(19) on
[redacted]5125/44-46

various communities in Fiji on this matter since Sir Alexander Grantham's despatch No.122 of the 2nd October, 1946.

61

(b) Whether the estimate of the proportion of Ahmeddiyas to orthodox Muslims in Fiji which was given in para. 6 of that despatch is still accurate.

(c) Whether there has been any strong demand over the course of the past few years for the adoption of Muslim law in cases of intestacy and whether consideration has been given to granting the concession ~~which~~ Lord Listowel's indicated in para. 4(c) of ~~his~~ despatch No.33 of the 15th April, 1949, ~~would be unobjectionable~~.

(d) Whether any demand which does exist for the alteration of the law as regards intestacy or any of the other ~~points~~ on which there has been a demand that Muslims should be ~~covered~~ governed by Muslim law, has been sufficiently strong for it to be properly describable as a general demand on the part of the Muslim community in the Colony.

I have etc.

62

The Church House,
Great Smith Street,
London, S.W.1.

HKP 173/1/01

31 March, 1952.

Your Ref.
F.4185/15

In Sidebotham's absence on leave, I am writing to acknowledge Pritchard's letter of the 22nd March about the representations from Pakistan regarding the Muslim minority in Fiji.

We shall probably be writing to the Government of Fiji about this matter in the light of Pritchard's letter and a note by Sir Leslie Gibson on this subject, of which I enclose a copy for your information, and we will send you a copy of our draft communication to Fiji for your comments in due course.

(Sd) C. A. KIRKMAN

(C.A. Kirkman)

J.P. HAMPSHIRE, ESQ.,
COMMONWEALTH RELATIONS OFFICE.

C.O.

DRAFT AND RECORD COPY

5

63

LETTER SENT 31/3

REGISTERED No.

DATE.

The Church House,
Great Smith Street,
London, S.W.1.

DRAFT

HKP 173/1/01

March, 1952.

Your Ref.
F.4185/15

MR. .....

MR. .....

MR. .....

.....

.....

ENCLOSURES

FURTHER ACTION

In Sidebotham's absence on leave, I am writing to acknowledge Pritchard's letter of the 22nd March about the representations from Pakistan regarding the Muslim minority in Fiji.

We shall probably be writing to the Government of Fiji about this matter in the light of Pritchard's letter and a note by Sir Leslie Gibson on this subject, of which I enclose a copy for your information, and we will send you a copy of our draft communication to Fiji for your comments in due course.

(C.A. Kirkman)

To

G.P. HAMSHERE, ESQ.,
COMMONWEALTH RELATIONS OFFICE

926] Wt. 45136/842 20m. 3/49 C.N.Ld. 748

NOTE

Immigrants ought ordinarily to conform with the laws of the country of their adoption, but it is reasonable to make an exception, as regards matters of personal status, in the case of a sizeable community permanently established. The grounds for this exception are probably stronger as regards a community whose personal law has a religious basis.

2. In considering whether to make an exception in the case of a particular community in a given colony, and, if so, how far the exception is to go, it is necessary to decide whether the application of the personal law of the community in question would be open to any objection on the grounds that -

(a) it would involve giving greater concessions to that community than are given to other communities with the same background in the same colony. For example, a Muslim community in a colony ought not to have greater concessions than are given to a Hindu community with the same background in that colony;

(b) it would involve giving greater concessions to that community than are given to communities in other colonies whose background is similar. For example, a Muslim community in Fiji ought not to be treated differently from the Muslim or Hindu community in Trinidad with a similar background;

(c) it would offend the public conscience e.g. where the personal law provides for polygamy or the Muslim form of divorce;

(d) it would be contrary to the wishes of the particular community as a whole.

3. If it is decided to apply the personal law as regards any matter to the members of the particular

/community

community in the given colony, it is further necessary to decide how far the application of the personal law shall be obligatory or optional.

4. The Muslim community of Fiji (6% of the population) is small compared with that of most other colonies which have enacted special laws for Muslims but, even so, it is a sizeable community. It has grown up over a considerable period and we can probably regard it as permanently established. There is therefore a case for considering special legislation for the community and in fact this has been recognised in principle by the enactment of section 44 of the Fiji Marriage Ordinance, cap. 118. The Government of Fiji may like to consider whether the application of Muslim personal law should now be carried further, and, in this connection, it would assist them to have a copy of the Library's memorandum on Muslim Legislation in the Colonies together with the following representative legislative precedents -

The Mohammedans Ordinance (Cap.57) of Singapore as amended by Ordinance No. 61 of 1940;

The Mohammedan Marriage Ordinance (Cap. 145) of Sierra Leone;

The Hindu Marriage Ordinance, 1945 of Trinidad as amended by Ordinance No. 23 of 1947;

The Muslim Marriage and Divorce Registration Ordinance (Cap. 29 No. 4) of Trinidad;

The Mohammedan Marriage, Divorce and Succession Ordinance of Kenya.

5. The law of Fiji already makes provision for Muslim marriages in section 44(1) of the Marriage Ordinance (Cap. 118). The only point here which merits further consideration is whether this provision covers all that is necessary. It will be seen that the Singapore Legislation covers a number of legal problems arising out

/of

of marriage which are not apparently covered by special legislation in Fiji. It is not suggested that the Singapore Legislation is suitable for use as a precedent in Fiji without careful consideration but an examination of it may suggest points on which it might be desirable to amplify the existing Fiji Legislation.

6. The Fiji Government may well conclude on consideration that if the Muslim law of marriage is to be applied, the Muslim law of divorce should also be applied - at least as regards marriages celebrated in contemplation of the possibility of such a divorce. The general trend of colonial legislation is to apply the Muslim law as to divorce in cases where the Muslim law of marriages applies, and, although the Muslim form of divorce is very apt to be looked at askance by persons of other religions, it works reasonably well in Muslim communities.

7. As regards polygamy there seems no compelling reason to change the existing law of Fiji and if, as is assumed, public opinion in Fiji would be offended by the introduction of polygamy in respect of Muslims there is every reason to keep the law as it stands.

8. As regards inheritance the general trend of colonial legislation is to apply the Muslim law in cases of intestacy but not to go any further. It is thought that this is the correct approach to the problem.

9. There do not appear to be any precedents in colonial legislation as regards the adoption of the Muslim law regarding guardianship and, unless there is now good reason to apply it in Fiji, it is suggested that it should not be applied. In any event the application of Muslim law ought, as has been pointed out previously, to be subordinated to the principle that it is the welfare of the minor which is of paramount importance.

G.R.

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MEMORANDUM SHOWING THE EXTENT TO WHICH COLONIAL LEGISLATION MAKES SPECIAL PROVISION IN RELATION TO MARRIAGE, DIVORCE, POLYGAMY, INHERITANCE AND GUARDIANSHIP IN ACCORDANCE WITH MOHAMMEDAN LAW.

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PRINTED FOR USE OF COLONIAL OFFICE
Western Pacific No 8

ADEN

(Population approximately 87% Muslim)

Marriage and Divorce

The Qadhi Ordinance (Cap. 118 Revised Edition 1945) provides for the appointment of a Qadhi and confers on him certain powers and duties in relation to the registration of Moslem marriages and divorces.

Polygamy

No mention occurs in the Aden legislation. The Indian Penal Code, which applies to Aden provides (sec. 494) that "Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished ...." The wording of this section appears to have been designed to take cognisance of plural marriages where they are permitted by a religious law or custom.

Inheritance

By section 3 of the Mohamedan Wakf Ordinance (Cap. 90 Revised Edition 1945) it is lawful for any person professing the Mohamedan faith to create a wakf which in all other respects is in accordance with the provisions of Mohamedan law, for, inter alia, the maintenance and support of his family, children or descendants.

Guardianship

Section 4 of the Guardians and Wards Ordinance (Cap. 59 Revised Edition 1945) provides: "In the case of a minor who is not a European or an American, nothing in this Ordinance shall be construed to take away or derogate from any power to appoint a guardian of his person or property, or both, which is valid by the law to which the minor is subject." Section 15 provides that nothing in Part II of the ordinance (dealing with the appointment and declaration of guardians by the Supreme Court)" shall authorise the Court to appoint and declare a guardian of the person ..... subject to the rules of Mohamedan law, of a minor whose father is living....."

BRITISH GUIANA

(Population approximately 8% Muslim)

Marriage and Divorce

There is no legislation applying specifically to Mohammedans, but under section 142 of the Immigration Ordinance (Cap. 208 Revised Edition 1930), as amended by 42/29, a marriage contracted between male and female immigrants both of whom profess the same religion and are subject to the same personal law shall, if contracted according to their religion and personal law, be deemed to be valid. Minimum ages are fifteen in the case of the male and thirteen in the case of the female. Divorce is granted by the Chief Justice, after examination of the application, witnesses, etc., by a magistrate.

Polygamy

Expressly prohibited by section 136 of Cap. 208.

/Inheritance

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BRITISH GUIANA cont. 68

Inheritance

Special provisions are made for dealing with the property of deceased immigrants, and Moslem law does not apply (Part XVI of Cap.208).

Guardianship

Section 234 of Cap. 208 provides that the Immigration Agent General may commit the care and custody of any orphan child of an immigrant to any guardian whom he thinks fit.

BRUNEI
(Population approximately 6% Muslim)

Marriage and Divorce

Enactment No. III of 1913 provides for the registration of marriages and divorce of Muhammadans.

Polygamy

No mention occurs in the legislation.

Inheritance

No legislation on the subject.

Guardianship

No legislation on the subject.

Note Enactment No. I of 1912 provides for the punishment of certain offences by Muhammadans.

CYPRUS
(Population approximately 18% Muslim)

Marriage and Divorce

The Turkish Family (Marriage and Divorce) Law, No. 4 of 1951, applies only to cases in which one of the parties is a Turk resident in Cyprus professing the moslem faith. It provides for civil marriage, which may be followed by a religious ceremony if desired. Divorce or judicial separation may be granted by the Turkish Family Court.

Polygamy

Expressly prohibited by section 8 of Law No. 4 of 1951.

Inheritance

By the Turkish Family Courts Law, No. 3 of 1951, all proceedings relating, inter alia, to inheritance and succession and wills concerning persons of the Moslem faith shall be determined by such Courts, which shall apply the Sheri Law, save as other provision has been or shall be made.

Guardianship

There is no separate legislation relating to Moslems, and they are not excepted from provisions of Guardianship of Infants and Prodigals Law (Cap. 102 Revised Edition 1949).

/FIJI

/FEDERATION OF MALAYA

G.R.

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FIJI

(Population approximately 6% Muslim)

Marriage and Divorce

The Marriage Ordinance (Cap. 118 Revised Edition 1945) provides:-

"Section 44(1). It shall be lawful for the Governor to appoint any Mohammedan, Hindu or any other Indian professing any recognized religion to be an Indian marriage officer for the purposes of marriages between immigrants who are of the same religion as such marriage officer, and any such marriages shall, subject to their being in accord with the personal law of the parties and subject otherwise to the provisions of this Ordinance, be deemed to be legal and valid".

Minimum ages in the case of immigrants are 18 in the case of a male and 14 in the case of a female (section 43 as amended by Ordinance No. 13 of 1947).

No specific provision is made for the divorce of Mohammedans, the legislation providing only for the recording by the Registrar-General of "any divorce duly granted to any immigrant by the Supreme Court" (section 48).

Polygamy

Polygamy is expressly prohibited by section 44A of Cap. 118, as enacted by Ordinance No. 15 of 1949, which reads as follows:-

"Nothing in the provisions of section 44 of this Ordinance shall be deemed to authorize an immigrant, who has a husband or wife living, to go through a ceremony of marriage with a person other than such husband or wife and any ceremony of marriage gone through by an immigrant in the circumstances referred to in this section shall, notwithstanding that it is in accord with his personal law, be deemed to be void by reason of its taking place during the life of such husband or wife."

Inheritance

There are no special provisions relating to Mohammedans.

Guardianship

Cap. 222, Revised Edition 1945, makes provision for the care and custody of Indian orphans, but does not relate specifically to those of the Mohammedan faith.

/ FEDERATION OF MALAYA

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FEDERATION OF MALAYA

(Population approximately 45% Muslim)

Marriage and Divorce

Cap. 197 of the Revised Edition of the Laws of the Federated Malay States, 1935, comprises enactments of the former Federated States of Perak, Negri Sembilan, Selangor and Pahang, providing for the registration of marriages and divorces of Muhammadans. As regards the former Unfederated States, Johore (Enactment No. 17, Revised Edition 1935), Kelantan (Enactment No. 22 of 1938), and Trengganu (Enactment No. 38 of 1356) provide for marriage and divorce, whilst Kedah (Enactment No. 68 Revised Edition 1934) and Perlis (Enactment No. 9 of 1332) lay down the procedure to be followed for divorce only.

Polygamy

No mention occurs in any of the legislation referred to above.

Inheritance

With regard to the former Federated States, the Probate and Administration Enactment (Cap. 8 Revised Edition 1935) provides that nothing contained therein shall affect any rules of Muhammadan law as ~~raised~~ varied by local custom in respect of the distribution of the balance of the estate of a deceased person after the debts have been satisfied; and the Wills Enactment (No. 5 of 1938) states that it shall not apply to the wills of Muhammadans whose testamentary powers shall remain unaffected thereby.

As regards the former Unfederated States:-

The Johore Probate and Administration Enactment (No. 22 Revised Edition 1935) excepts Muhammadan estates from its provisons in terms similar to those in the Federated Malay States legislation. The Bait-ul-Mal Enactment of that State (No. 136 Revised Edition 1935) provides for the collection and disposal of any share of the estate of a deceased Muhammadan which according to Muhammadan law is due to that fund.

The Kedah Administration of Estates Enactment (No. 1 Revised Edition 1934) provides that in cases where the religion professed by the deceased lays down principles or rules governing wills or the descent of property or the distribution of property on intestacy, the estate shall be dealt with according to the law as established according to such religion.

The Kelantan Distribution Enactment (No. 15 of 1930) excepts Muhammadan estates from its provisions in terms similar to those in the Federated Malay States Probate and Administration Enactment.

The Perlis Administration of Estates Enactment (No. 1 of 1338) provides for estates to be dealt with according to the religious laws of the deceased.

The Trengganu Probate and Administration Enactment (No. 22 of 1356) contains provision similar to that described above for Kedah. This State also has a Bait-ul-Mal Enactment (No. 37 of 1356) identical with that of Johore.

Guardianship

There is no specific legislation relating to moslems, but section 6(i) of the Civil Law Enactment of the Federated Malay States (No. 3 of 1937) is as follows:-

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G.R.

FEDERATION OF MALAYA cont. 71

"In all cases relating to the custody and control of infants the law to be administered shall be the same as would have been administered in like cases in England at the commencement of this Enactment regard being had to the religion and customs of the parties concerned, unless in any case other provision is or shall be made by any written law."

General

The Muhammadan Law and Malay Custom (Determination) Enactment (Cap. 196 Revised Edition 1935) provides that any Civil Court before which any question of Muhammadan law arises may refer such question to the State Council of the State within which the suit has been instituted for its decision. Upon the receipt of such decision the Court shall proceed to determine the matter in accordance therewith.

GAMBIA
(Population approximately 80% Muslim)

The Mohammedan Law Recognition Ordinance, (Cap. 76 Revised Edition 1942) provides:-

Section 4. There shall be a Court at Bathurst to be known as the Mohammedan Court.

Section 6. The Court shall have jurisdiction in all causes and matters..... between or exclusively affecting Mohammedan natives, relating to civil status, marriage, succession, donations, testaments and guardianship.

Section 7. Save in so far as may be prescribed, the procedure and practice of the Court shall be according to the rules of the Mohammedan law.

There is also a Mohammedan Marriage and Divorce Ordinance (No. 1 of 1941).

GOLD COAST
(Population approximately 10% Muslim)

Marriage and Divorce

The Marriage of Mohammedans Ordinance (Cap. 107 Revised Edition 1936) provides for the licensing of Mohammedan priests and the registration of marriages and divorces among Mohammedans.

Polygamy

No mention occurs in the legislation.

Inheritance

Section 6 of the Marriage of Mohammedans Ordinance (Cap. 107 Revised Edition 1936) provides that on the death of a Mohammedan whose marriage has been duly registered under this Ordinance, the succession to his or her property shall be regulated by Mohammedan law.

Guardianship

No mention occurs in the legislation.

/JAMAICA

G.R.

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JAMAICA

Marriage and Divorce

There is no legislation applying specifically to Mohammedans, but under section 14 of the Indian Immigrants Marriage, Divorce and Succession Law (Cap. 456 Revised Edition 1938), a marriage contracted between male and female immigrants both of whom profess the same religion, not being the Christian religion, and are subject to the same personal law, shall, if contracted according to their religion and personal law, be deemed to be valid. Minimum ages are fifteen in the case of the male and thirteen in the case of the female. Divorce is granted by the Chief Justice, after examination of the application, witnesses, etc., by a magistrate.

Polygamy

Expressly prohibited by section 8 of Cap. 456.

Inheritance

Special provisions are made for dealing with the property of deceased immigrants, and Moslem Law does not apply (sections 46 and 47 of Cap. 456).

Guardianship

No legislation relating to Moslems.

KENYA

Marriage and Divorce

It is provided by the Mohammedan Marriage, Divorce and Succession Ordinance (Cap. 148 Revised Edition 1948) that Mohammedan marriages shall be deemed to be valid marriages throughout the Colony, and the parties thereto shall, subject to the provisions of the ordinance, be entitled to any relief by way of divorce or otherwise which can be had, granted, or obtained according to Mohammedan law, and such law shall apply accordingly. The Supreme Court shall have jurisdiction to hear and determine all matrimonial causes and suits arising out of Mohammedan marriages, and shall exercise such jurisdiction and act and give relief upon the principles of Mohammedan law. The registration of such marriages and divorces is provided for by a separate ordinance (Cap. 147 Revised Edition 1948).

Polygamy

Polygamy is not specifically mentioned, but Cap. 148 provides that whoever contracts a Mohammedan marriage being at the time married under the Marriage Ordinance (an ordinance relating to marriages other than those in accordance with native law and custom or Mohammedan law), or in accordance with the law of any Christian country and without having first obtained a lawful divorce, shall be liable to imprisonment; similar provisions exist in the case of a person contracting a Mohammedan marriage being at the time married in accordance with native law and custom. Moreover, the form of register of Mohammedan marriages (Schedule I to Cap. 147), whilst requiring to know whether the bride is a spinster, widow or divorced from a former husband, requires no such personal particulars in the case of the bridegroom. See also the phrase "or, being a male, contracts marriages" in the paragraph relating to Inheritance below. There is therefore an implied recognition of polygamy in the case of Mohammedans.

/Inheritance

G.R.

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KENYA cont.

Inheritance

Section 4 of Cap. 148 reads as follows:-

"Where any person contracts a marriage or, being a male, contracts marriages, in accordance with Mohammedan law, whether such marriage or marriages shall have been contracted either prior or subsequently to the commencement of this Ordinance, and such person dies after the commencement of this Ordinance, and where the issue of any such marriage or marriages dies after the commencement of this Ordinance the law of succession applicable to the property both movable and immovable of any such person shall be in accordance with the principles of Mohammedan law, any provision of any Ordinance or rule of law to the contrary notwithstanding:

Provided that where in any respect of Mohammedans to which the deceased belonged the law of succession differs from the ordinary law of succession in accordance with the ordinary principles of Mohammedan law then the law of succession applicable to such sect shall apply."

Guardianship

No mention occurs in the legislation.

MAURITIUS

(Population approximately 15% Muslim)

Marriage and Divorce

The Indian Marriage Ordinance (Cap. 42 Revised Edition 1945) provides for the appointment of Mahomedan priests as unpaid civil status officers for the celebration of marriages between Mahomedans. It further enacts that it shall be lawful for any priest without previous publication and without any other formality required by the Civil Status Ordinance to solemnize marriage between Mahomedans, and such marriage shall be as valid as if it had been celebrated in conformity with the Civil Status Ordinance. There is no legislation relating to Mahomedan divorce.

Polygamy

Expressly prohibited by section 49 of the Civil Status Ordinance (Cap. 39 Revised Edition 1945).

Inheritance

No mention occurs in the legislation.

Guardianship

No mention occurs in the legislation.

NIGERIA

Marriage and Divorce

There is no legislation relating specifically to Mohammedan marriages, but section 35 of the Marriage Ordinance (Cap. 128 Revised Edition 1948) is as follows:-

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"Any person who is married under this Ordinance, or whose marriage is declared by this Ordinance to be valid, shall be incapable, during the continuance of such marriage, of contracting a valid marriage under native law or custom; but, save as aforesaid, nothing in this Ordinance contained shall affect the validity of any marriage contracted under or in accordance with any native law or custom, or in any manner apply to marriages so contracted"

As regards divorce, the jurisdiction conferred upon the Supreme Court by section 22 of the Supreme Court Ordinance (Cap. 211 Revised Edition 1948) is subject to the provisions of section 17 of the same ordinance, sub-section (i) of which is as follows:-

"Nothing in this Ordinance shall deprive the Supreme Court of the right to observe and enforce the observance, or shall deprive any person of the benefit of any existing native law or custom, such law or custom not being repugnant to natural justice, equity, and good conscience, nor incompatible either directly or by necessary implication with any law for the time being in force".

Polygamy

No specific mention occurs in the legislation, but section 35 of the Marriage Ordinance, quoted above, appears to imply recognition of polygamy where, and to the extent to which, it is permitted by native law and custom.

Inheritance

The Administration (Real Estate) Ordinance (Cap. 2 Revised Edition 1948) provides:-

"Section 2. When any person shall die intestate... leaving any real property of whatsoever nature of which the intestate might have disposed by will, such real property shall for the purpose of administration be deemed to be part of the personal estate of the said intestate and shall be administered accordingly;

Provided always that the real property the succession to which cannot by native law and custom be affected by testamentary disposition shall descend in accordance with the provisions of such native law and custom anything herein contained to the contrary notwithstanding....."

Guardianship

Section 30 of the Children and Young Persons Ordinance (Cap. 31 Revised Edition 1948) in part reads as follows:-

"(1) No person shall give or acquire the custody, possession, control or guardianship of a child..... in such circumstances that it may reasonably be inferred that such child has been sold or bartered or that by reason of such giving or acquiring such child may reasonably be inferred to be placed in moral danger.

.....

Provided that it shall be a defence to prove that such child was so given or acquired in accordance with native law or custom as far as such native law or custom is not repugnant to natural justice, morality or humanity or inconsistent with any written law.

(3) The Governor in Council may by order notwithstanding native law or custom to the contrary declare that in any area of Nigeria described in such order no person shall give or acquire the custody, possession, control or guardianship of any child or of any young person or of any female of any specified age below the age of seventeen years..... save in accordance with rules made by the Governor in Council....."

NORTH BORNEO

Marriage and Divorce

The Native Administration Ordinance (No. 2 of 1937) provides for the registration of Mohammedan marriages and divorces. It provides for the establishment of Native Courts, which shall exercise jurisdiction, where two members of the Court are Mohammedans, in cases arising from the breach of Mohammedan law and custom in which all the parties are Mohammedans.

Polygamy

No mention occurs in the legislation.

Inheritance

The legislation makes no reference to the disposition of the estates of deceased Mohammedans. There is an ordinance (No. 1 of 1941) providing for the administration of native estates, but the definition of native for this purpose is "any aboriginal inhabitant of the Malay Archipelago and the children of such an inhabitant by any union with any native or alien."

Guardianship

The Guardianship of Infants Ordinance (No. 4 of 1946) does not except Mohammedans from its provisions.

NYASALAND

Marriage and Divorce

There is no legislation relating specifically to Mohammedan marriage and divorce, but the Asiatics (Marriage, Divorce and Succession) Ordinance (Cap. 5 Revised Edition 1946) provides that the marriage of non-Christian Asiatics, whether domiciled in the Protectorate or not, who are not related to each other in any of the degrees of consanguinity or affinity prohibited by the law of the religion of either party to the marriage, shall, if the marriage is contracted in the manner customary in the Protectorate among persons professing the religion of either party to the marriage be deemed to be a valid marriage. Similarly, the divorce of non-Christian Asiatics shall, if on grounds which are recognised as valid grounds by the law of the religion of the person divorced and if effected in the manner customary among persons professing that religion, be deemed to be a valid divorce.

/Polygamy

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NYASALAND cont. 76

Polygamy

No mention occurs in the legislation.

Inheritance

The Asiatics (Marriage, Divorce and Succession) Ordinance (Cap. 5 Revised Edition 1946) provides as follows:-

"Section 6 (1) Subject to the provisions of this or any Ordinance or applied Act for the time being in force in the Protectorate, the succession to the movable property in the Protectorate of a deceased non-Christian Asiatic who at his death is domiciled in the Protectorate and to the immovable property in the Protectorate of such an Asiatic, whether domiciled in the Protectorate at his death or not, shall be regulated by the law of the religion professed by him at his death;

Provided that so much of the law of any religion as deprives any person of a right of succession to property by reason of that person having renounced or having been excluded from the communion of any religion..... shall not be in force in the Protectorate....."

Guardianship

No relevant legislation

SARAWAK

(Population approximately 25% Muslim)

Marriage and Divorce

Under the provisions of the Mohammedan Marriage Ordinance (Cap. 75 Revised Edition 1947) an "Orang Dagang" (any male person of the Malay race or professing the Mohammedan religion who is not domiciled in the Colony) shall not marry in the Colony unless and until he proves to the satisfaction of the Native Officer that he is -

(a) not already married;

(b) free from debt; and

(c) able to provide for and maintain a wife and family;

and obtains the permission of the Native Officers to marry. An Orang Dagang who has married shall not leave the Colony without permission, which may be withheld in the absence of satisfactory evidence that he has made proper provision for the maintenance of his wife and children. The ordinance also provides for the registration of a divorce by the Headman of a town or village, after he has satisfied himself as to its validity.

Polygamy

It will be seen from the foregoing paragraph that poygamy is not lawful in the case of an "Orang Dagang". This prohibition cannot apply to all Mohammedans, however, since the Mohammedan Wills Ordinance (vide the following paragraph) provides for the willing of property to the "wife or wives" of the testator. (In this connexion, cf. the Chinese Marriage Ordinance (Cap. 74) which contains no such prohibition).

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/Inheritance

G.R.

SARAWAK cont.

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Inheritance

The Mohammedan Wills Ordinance (Cap. 81 Revised Edition 1947) sets out a form of will which may be used by persons of the Mohammedan religion, but enacts that the use of the form shall be optional and that persons who prefer to draw up wills before other witnesses according to the Mohammedan law of inheritance shall be permitted to do so, and such wills may be recognised as legal and valid. The ordinance further provides:-

"Section 6. The drawing up and division of property shall not necessarily be regulated by the Mohammedan law of inheritance, but shall be in accordance with the desire and wishes of the testator;

Provided that the three witnesses (viz., two Native Chiefs of the Mohammedan religion, and a senior Government officer) shall, in the event of the testator willing all his property away to others than of his own family, advise such alteration being made with the consent of the testator as they think fair for the children, wife or wives, concubine or concubines, and that should the testator refuse to give his consent to such alteration such will may be refused."

The Mohammedan Converts (Property) Ordinance (Cap. 82) prescribes certain formalities with regard to the disposal of property to be observed by Milanos and other Pagans who are converted to the Mohammedan faith.

Guardianship

The Adoption Ordinance (Cap. 76 Revised Edition 1947) contains the following provisions:-

"Section 3(2). Such adopted child shall stand in the same relation to the adopting parent or parents as would a child born in wedlock and shall have all the rights and privileges of a legitimate child in respect of the obligations and estate of the adopting parents.

.....

Section 4(5). It shall be the duty of the District Officer before registering an adoption by a person who professes the Mohammedan faith to draw the specific attention of such person to subsection (2) of section 3 of this Ordinance, and to inform him in clear unmistakable terms that the adoption of children on such a basis is contrary to the Hukum Shara....."

SIERRA LEONE

Marriage and Divorce

The Mohammedan Marriage Ordinance (Cap. 145 Revised Edition 1946) provides that every marriage entered into and subsisting between persons professing the Mohammedan faith and domiciled in the Colony or Protectorate which is valid according to Mohammedan law shall be valid for all civil purposes. This ordinance also makes provision for the registration of Mohammedan marriages and final divorces.

Polygamy

No mention occurs in the legislation.

/Inheritance

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SIERRA LEONE cont. 78

Inheritance

The Mohammedan Marriage Ordinance (Cap. 145) enacts:-

"Section 9(1). If any party to a Mohammedan marriage and being at the date of his death a Mohammedan, or if any person being unmarried and being at such date a Mohammedan, shall die intestate, the estate real and personal of such intestate shall be distributed in accordance with Mohammedan Law,

(2) The following persons shall be entitled to take out letters of administration in the order named, viz.:-

(a) The eldest son of the intestate, if of full age according to Mohammedan Law.

(b) The eldest brother of the intestate, if of full age according to Mohammedan Law.

(c) The official Administrator.

.....

Section 10. In the event of there being at the time a Tribal Authority of a race which is Mohammedan, the Official Administrator shall, in the absence of any direction given by the Chief Justice to the contrary, consult such authority as to what is the Mohammedan Law as to the distribution of an intestate's estate."

Guardianship

No mention occurs in the legislation.

SINGAPORE

Marriage and Divorce

The Mohammedans Ordinance (Cap. 57 Revised Edition 1936) provides, inter alia, for the appointment of Kathis and for the registration of marriages, divorces and revocations of divorce between Mohammedans. Kathis are empowered to receive applications for divorce, to enquire into such applications and into questions arising out of the Mohammedan law regarding recalcitrancy, and to make such orders or decrees arising therefrom as are by Mohammedan law lawful. The Governor may confer upon a Kathi the powers of a Civil Court to inquire into and adjudicate upon claims for the payment of dowry or alimony on divorce known as "taalik" subject to certain limits in respect of the sums concerned.

Polygamy

There is no specific reference to polygamy, but the legislation relating to the effect of marriage on property (vide below) employs the term "widow or widows" and refers to the ownership of household goods "when a Mohammedan husband and his wife or wives live together in the same house". There is thus no doubt that polygamy is recognised.

/Inheritance

SINGAPORE cont.

G.R.

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Inheritance

Part III of the Mohammedans Ordinance (Cap. 57) enacts the modifications of the laws of property to be recognised in the case of Mohammedan marriages. In intestacy the estate shall be administered according to Mohammedan law, except in so far as such law is opposed to any local customs which prior to the 1st January, 1924, had the force of law. It is provided that in deciding questions of Mohammedan Law of Succession and Inheritance the Court shall be at liberty to accept any definite statement on the Law made in all or any of a list of books, including an English translation of the Koran. The Ordinance also deals with married women's property.

Guardianship

The guardianship of infants legislation contains no reference to Mohammedan law on the subject.

SOMALILAND
(Population approximately 100% Muslim)

Marriage and Divorce

The Somali are stated to be Sunni Mohammedans (Colonial Office List.) The Natives' Betrothal and Marriage Ordinance (Cap. 67 Revised Edition 1930, as amended by Ordinances 1 of 1931 and 4 of 1937) contains no specific reference to Mohammedan law, but regulates in some particulars the formalities in regard to native marriages. The legislation does not provide for divorce, but divorced women are referred to therein.

Polygamy

A native may marry under the Marriage Ordinance (Cap. 66 Revised Edition 1930) but if he does so he is forbidden under penalties to contract any marriage under native law in addition.

Inheritance

The Marriage Ordinance (Cap. 66 provides as follows:-

"Section 39(a) Where any person who is subject to native law or custom contracts a marriage in accordance with the provisions of this or of any other law relating to marriage,..... and such person dies intestate, leaving a widow or husband, or any issue of such marriage;

(b) and also where any person who is the issue of any such marriage as aforesaid dies intestate: .....;

(c) the personal property of such intestate, and also any real property of which the said intestate might have disposed by will, shall be distributed in accordance with the provisions of the law of England....., any native law or custom to the contrary notwithstanding;

.....

(e) Provided that real property, the succession to which cannot by native law or custom be affected by testamentary disposition, shall descend in accordance with the provisions of such native law or custom, anything herein to the contrary notwithstanding".

Guardianship

No relevant legislation.

G.R.

TANGANYIKA

80

Marriage and Divorce

There is no legislation relating specifically to Mohammedans. The Marriage, Divorce and Succession (Non-Christian Asiatics) Ordinance (Cap. 112 Revised Edition 1947) provides that the marriage in the Territory of non-Christian spouses either of whom is an Asiatic, whether domiciled in the Territory or not, who are not related to each other in any of the degrees of consanguinity or affinity prohibited by the law of religion of either party to the marriage, shall, if the marriage is contracted in the manner customary in the Territory among persons professing the religion of either party to the marriage, be deemed for all purposes to be a valid marriage. An amendment to this ordinance (No. 44 of 1947) gives to the High Court jurisdiction to hear and determine matrimonial causes and suits arising out of the marriage of non-Christian spouses either of whom is an Asiatic, and provides that such jurisdiction shall be exercised upon the principles of the law of the religion of the parties where their religon is the same, or, if different, by the law of the religion in accordance with which the marriage was solemnized.

Polygamy

No mention occurs in the legislation.

Inheritance

Cap. 112 enacts that, with certain reservations, the succession to movable property of a deceased non-Christian Asiatic who at his death is domiciled in the Territory and to the immovable property of such an Asiatic, whether domiciled in the Territory at his death or not, shall be regulated by the law of the ~~provision~~ religion professed by him at his death.

Guardianship

No relevant legislation.

TRINIDAD

(Population approximately 6% Muslim)

Marriage and Divorce

The Muslim Marriage and Divorce Registration Ordinance (Cap. 29, No. 4, Revised Edition 1940) provides for the appointment of Marriage Officers and Divorce Officers (being fit and proper persons members of the Muslim community), the registration of marriages and divorces, and sets out the requisites of a valid Muslim Marriage; these, in part, are:-

(a) that each of the parties belongs to and professes the Muslim faith or religion;

(b) that each of the parties shall, as regards age, mental capacity and otherwise, be capable of contracting marriage. (Note: The minimum ages are sixteen in the case of males and twelve in the case of females);

(c) that the parties shall not by reason of anything contained in the Islamic law relating to marriage be prohibited from marrying one another;

(d) that the parties, understanding the nature of the contract, shall freely consent to marry one another.

Divorces effected by or before a Divorce Officer according to the Islamic law of divorce, dissolution and annulment of marriage, and

/registered

registered in accordance with the provisions of the ordinance, shall be deemed to be valid for all purposes as from the date of registration.

Polygamy

No mention occurs in the legislation.

Inheritance

There are no special provisions in the relevant legislation for dealing with Muslim estates.

Guardianship.

The Guardianship of infants legislation contains no special provision in relation to Muslims.

UGANDA

Marriage and Divorce

The Marriage and Divorce of Muhammadans Ordinance (Cap. 104 Revised Edition 1935) provides as follows:-

> "Section 3. All marriages between persons professing the Muhammadan religion, and all divorces from such marriages celebrated or given according to the rites and observances of the Muhammadan religion customary and usual among the tribe or sect in which the marriage or divorce takes place, shall be valid and registered as herein provided."

Polygamy

No specific mention occurs in the legislation, but the form of Register of Marriages scheduled to Cap. 104 provides for information to be furnished as to "whether the bride is a spinster, a widow, or divorced by a former husband". Since one of a number of wives of one husband could not be said to come under any of the foregoing descriptions (except possibly the last), it would appear that polygamy is not recognised by the law.

Inheritance

The legislation makes no special provision in relation to Mohammadan estates.

Guardianship

No relevant legislation.

ZANZIBAR

Marriage and Divorce

The Marriage and Divorce (Mahommedan) Registration Decree (No. 8 of 1935, as amended by No. 5 of 1944) makes provision for the registration of Mahommedan marriages, divorces and revocations of divorce other than those in which both parties are Indian members of certain specified sects or communites, and prescribes the formalities to be followed.

/Polygamy

G.R.

ZANZIBAR cont. 82

Polygamy

No mention occurs in the legislation.

Inheritance

Section 7 of the Succession Decree (Cap. 13 Revised Edition 1934) provides that subject to the provisions of Parts XXIX to XLI of the Decree (relating to grant of probate, powers, and duties of executors, etc.) Mahommedans shall be governed, in matters relating to inheritance, by the personal law to which they are subject.

Guardianship

The Arab and African Guardianship Decree (Cap. 17) relates to the care of the person and property of Arab and African wards under the age of twenty-five years, but no specific reference is made to Mahommedans or Mahommedan law.

General

Section 7 of the Courts Decree (Cap. 3) lays down that:-

"In civil matters the Law of Islam is and is hereby declared to be the fundamental law of the Protectorate."

Glenberger

4th March, 1952.

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Mr. Kirkpatrick. Hyde Park Barracks question

This will want looking at shortly & will be taken below. I had better

~~J.B. Sidebotham, Esq., C.M.G.,~~

Colonial Office.

send an interim reply
if possible. In case Lord Chelmsford goes Fiji answer this

N.P.

JBS
24/3

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COMMONWEALTH RELATIONS OFFICE

DOWNING STREET

LONDON S.W.1

WHItehall 2323
Ext.: 256
Your reference :
Please quote in reply: F.4185/15

22nd March, 1952.

My dear Sidebotham,

In January there was an exchange of correspondence in Paris between Mathieson of the United Kingdom Delegation to the United Nations and Zia-ud-Din of the Pakistan Delegation on the subject of Muslim personal law in Fiji. Subsequently Kirkman of your Department told Hampshire of this Office that it would be helpful to the Colonial Office to have an expression of Commonwealth Relations Office views from the standpoint of relations between the United Kingdom and Pakistan.

2. From the Commonwealth Relations Office point of view it seems to us that the following are the important considerations to be borne in mind.

(a) As you know it was agreed with the Indians when they were appointing Commissioners to Kenya, Malaya etc. in 1948, that persons of Indian origin permanently resident in the colonies should regard themselves first and foremost as loyal citizens of the colony itself and that the Government of India should not in any way assume to act as their "protector". We took the same general line with the Pakistanis when it was agreed in May, 1949 that they might appoint a Commissioner to British East Africa, and we should remind them, in the context of this Fijian question, of the point of principle.

(b) In carrying out the above policy our practice with India has been to give factual information freely and

also/

J.B. Sidebotham, Esq., C.M.G.,
Colonial Office.

also to be ready to discuss matters in which the Government of India could be held, on a liberal interpretation, to have a justifiable concern.

(c) We ought therefore to be in a position to give a full and convincing explanation of our policy in Fiji to the Pakistan Government and it would be embarrassing if such an explanation could not be defended against reasonable argument.

(d) We would expect the Pakistanis to press their arguments because they themselves are under continual pressure from "pan-Islamic" enthusiasts both within and outside their ranks which they are not in a position to ignore. Whatever the merits of the case, it would be most embarrassing for them if there were to be a public outcry (however ill-founded) against the United Kingdom Government for alleged persecution of the Fiji Muslims. Another important consideration is that Sir Zafrullah Khan is himself an extremely devout Ahmediyya, and this almost certainly lies behind the persistency with which this small issue is revived. It if were to develop into a major contention, there is a strong "Islamic" element in the Government who might well wish to take it even more seriously than Sir Zafrullah himself might desire.

(e) In Pakistan itself Christians and other non-Muslims are free to follow their own laws on personal matters of this kind. This policy was in fact nurtured by the

British/

British Raj in India. We do not take seriously the threat to withdraw these privileges in Pakistan if we do not meet their wishes in Fiji. But it is understandable that, against the background of the practice and policy in their own country, the Pakistanis may find it difficult to be persuaded that similar freedom cannot be extended to their co-religionists in Fiji.

(f) The really difficult points seem to be polygamy and the Muslim law on divorce - though the testamentary question may also require consideration (paragraph 5 of Ziaud Din's letter to Mathieson of 17th January). We are not altogether clear whether the Colonial Office policy in the past has been based (i) on a question of principle or (ii) on the attitude of the majority of all the inhabitants or (iii) on the attitude of the majority of the Muslim inhabitants. Prima facie (i) would seem to us to be difficult to defend in the light of the practice in Colonial African Territories and in India under the British Raj. As to (iii) the argument in the past appears to have been that the orthodox Muslims do not understand the problems involved and the Ahmeddiyas are opposed to any innovation. As to this we cannot take lightly Sir Zafrullah Khan's assertion that his Ahmeddiya co-religionists are in favour of the institution of Muslim personal law.

(g) It would be difficult to send a convincing reply to the Pakistanis without prior consultation with the Governor of Fiji. In the first place the Pakistanis would, I think naturally, expect that we would obtain advice from the man on the spot and secondly we need, I suggest, up-to-date information on the facts. It may be that there has been some shift of opinion among the various communities in Fiji since the Governor last reported on the subject rather more than three years ago. It would in any case be useful to know how many Ahmeddiyas there are there and how many orthodox Muslims.

3. In short we feel justified in asking that this problem should be looked at afresh. Although it is a comparatively small matter in itself it may have quite substantial effects upon the attitude of Pakistan to this country and, from the

point/

point of view of our relations with Pakistan therefore, it requires handling with both consideration and delicacy. Accordingly we hope that it will be possible to ask the Governor of Fiji to make a new and independant assessment in the light of the latest situation in Fiji. If this shows that the time is ripe for a change in the direction desired by Pakistan, that would of course be very satisfactory from our point of view. If not we would hope that consideration might be given to some concessions to Muslim susceptibilities.

Yours ever

Neil Pritchard

(N. Pritchard)

United Kingdom Delegation to
the General Assembly of the
United Nations
20 avenue Montaigne
Paris, France.

19th January, 1952.

My dear George,

I enclose copies of an exchange of correspondence between myself and Zia-ud-Din of the Pakistan Delegation on the subject of Muslim personal law in Fiji. It speaks for itself.

I am sending a copy of this letter and its enclosure to G.P. Hampshire in the Commonwealth Relations office.

Yours ever,

Will Mathieson

(W.A.C. Mathieson)

W.G. Wilson, Esq.,
Colonial Office,
London, S.W.1.

COPY

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PAKISTAN DELEGATION TO THE UNITED NATIONS
GENERAL ASSEMBLY
PARIS

Enclosure to No 1 on
HKP 173/1/01

Hotel Plaza-Athénée
25 avenue Montaigne
Paris.

17th January 1952

My dear Mathieson,

I am obliged to you for your letter of 17th December, and the aide memoire enclosed with it. I have submitted them both to the Honourable Foreign Minister and have the following observations to offer:

To start with, I must point out that we do not believe that the Ahmadiyyas in Fiji are opposed to the compulsory juridiction of Muslim Personal Law. We feel that you could not have been correctly informed in this respect. Our Foreign Minister has personal knowledge that the Ahmadiyya community is anxious that the Muslim Personal Law should be enforced in that territory.

As regards the merits of the points summed up in Para 8 of your aide memoire, the differences arise from a fundamental difference of outlook towards the matters under discussion, and I will try to explain our views to you briefly.

Point (i) We are pleased to learn that the Muslim Form of marriage is expressly permitted by Fijian Legislation.

Point (ii) Muslim Law limits the powers of a testator, as it inculcates that absolute power of disposal over property belongs to an individual only while he is alive. He can dispose of property in any manner during his lifetime except when in imminent expectation of death, but he is not permitted to regulate its unrestricted disposal after death. For the disposal of estates Muslim Law contains clear rules whereby all dependents get their shares in an equitable manner. It is a part of the Muslim creed that inheritance should be regulated in the manner laid down by the Quran, and any system of law which permits a Muslim to avoid the restrictions of the creed is, in our opinion most objectionable. The real point which requires your attention is the power of testamentary disposition otherwise than permitted by Muslim Law, and we feel strongly that such power should be restricted in the case of the Muslims as prescribed by Muslim Law.

Point (iii) On this point our views coincide with yours. In fact, Muslim Law itself lays down that the welfare of the minor should be the primary consideration and a responsability of the court.

Point (iv) Polygamy. The difference between you and ourselves arises from different ideologies. Islam requires that all human relationships should be regulated beneficiently. It therefore recognizes that in exceptional cases recourse to polygamy may become necessary for national or individual needs and requirements. It permits polygamy within stringent limits and restrictions, but it prohibits adultery and fornication

/and

and prescribes severe punishments for both sexes if they commit these offences. Western Society prohibits polygamy but freely permits promiscuous sex relationships with all consequential evils.

In the case of Muslim Society the relationship is regulated and the wives and children of polygamous marriages have equal rights and an honourable place in society. I must make it clear that we do not wish to criticise or object to the Western System which is presumably in accord with the needs of and has the sanction of Western Society, but we feel that Muslims should be permitted to follow their own system.

As regards divorce, although it is free in Muslim Society it is seldom resorted to. In our society the divorce rate is extremely small. We prefer our system not only on account of its inexpensiveness but also becuase our system saves us from publicity of sordid details in a court of law. Muslim marriages contain the system of Dower which is always a great check on divorce. Therefore if Muslims desire to follow their own system you can understand their reasons.

Permit me to bring to your notice that in Pakistan, Europeans Christians and other Non-Muslims have full liberty to follow their own laws in these matters, and our courts and legislation recognize their special position. The jurisdiction of personal laws for Non-Muslims is fully respected in our country. We fear that if we are not able to persuade other governments to agree with our views in these matters, public opinion in Pakistan may soon demand that such privileges should be withdrawn from Non-Muslims in our country.

Our Government may then be compelled to impose Muslim Laws of inheritance, divorce and marriage (including the recognition and validation of polygamous marriages) upon Christians, Europeans and other Non-Muslims. That will be a regrettable situation, and I hope you will be good enough to help us, in insuring that such a situation should not arise.

The Ministry of Foreign Affairs and Commonwealth Relations at Karachi will be happy to furnish you with any further information which you may desire on this subject.

Yours sincerely,

(signed)

M. Ziaud Din
Ambassador

United Kingdom Delegation to
the General Assembly of the
United Nations
20 avenue Montaigne
Paris, France.

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END

19th January, 1952.

My dear Zia-ud-Din,

I am much obliged to you for your helpful letter of the 17th January on the subject of Muslim personal law in Fiji. It is clear to me from your letter that there is much to be said on your side of the question and I am, therefore, arranging immediately for this valuable exposition of your point of view to be brought to the attention of our people in London where, I am sure, it will receive the most careful and sympathetic consideration. As I myself am on the point of leaving the Delegation in Paris to prepare for my return to New York, I hope that you will feel able to place your letter on record with the office of your High Commissioner in London in order that when we have studied the question further discussions can take place between the appropriate officials on our side and yours in London.

May I take this opportunity of saying how pleased I am to have had this opportunity and privilege of meeting you and I hope that our association in United Nations matters will soon be renewed.

With kindest personal regards,

Yours sincerely,

(W.A.C. Mathieson)
Counsellor (Colonial Affairs)

Ambassador M. Zia-ud-Din,
Pakistan Delegation to the United Nations,
Plaza Athenée,
Paris, France.